CLIENT ALERT

This Month in International Trade - May 2014

Jun.04.2014

THIS MONTH'S TOP TRADE DEVELOPMENTS

1) WTO In U.S. Favor in Case on China's AD/CVD Measures on Autos

The Office of the U.S. Trade Representative announced on May 23, 2014 that the United States has prevailed in a World Trade Organization (WTO) dispute brought against China in July 2012 concerning the imposition of anti-dumping and countervailing duties (AD/CVD) on automobiles from the United States. In particular, a WTO dispute settlement panel ruled that China's measures are inconsistent with various rules contained in the WTO's General Agreement on Tariffs and Trade (GATT), Anti-Dumping Agreement (AD Agreement), and Agreement on Subsidies and Countervailing Measures (SCM Agreement) that prescribe basic requirements for countries in carrying out AD/CVD investigations. (The United States brought a separate case in September 2012 concerning "export-contingent" subsidies provided by China through a program establishing "export bases" for vehicle and auto parts industries. That case is still pending.)

Either or both parties may now appeal the ruling (panel report) to the WTO Appellate Body, and we expect that China almost certainly will do so. The appeals process would run approximately 4-6 months, after which time the Appellate Body would issue a ruling (Appellate Body report) affirming or reversing, in whole or in part, the panel report. Assuming the Appellate Body also finds China to have acted inconsistently with its WTO obligations, China would have a "reasonable period of time" – usually between 9 to 15 months – to "bring its measures into conformity" with WTO rules. If the United States believed that China had failed to come into compliance with the panel report/Appellate Body report, it could initiate WTO "compliance" proceedings that would also go through a panel and (likely) the Appellate Body, over a period of an additional 3-6 months. If China were still found out of compliance, the final remedy would be for the United States to seek approval from the WTO to retaliate against China through the "suspension of concessions," for example withholding certain favorable tariff treatment on Chinese exports. (Even though the duties at issue have expired, China may still need to modify its approach to AD/CVD procedures, so this compliance process could remain relevant.)

We will continue to follow this matter closely and would be pleased to speak with you or your colleagues in greater detail about its specific implications for your business.

For more information, contact: Jonathan (Josh) Kallmer

2) The Russia-Ukraine Crisis: New Developments, Elections, and Sanctions

May produced new developments, and new sanctions, in the ongoing crisis in the Ukraine. The European Union, Switzerland, and Canada all added new individuals and entities to their sanctions lists in May. The month ended with the relatively peaceful election of Petro Poroshenko, a billionaire widely considered pro-European, on May 25th, but a further descent into violence in Eastern Ukraine and the corresponding threat of new sanctions.

European Union

The EU agreed to sanction 13 new individuals on May 12th, along with 2 entities. As with previous sanctioning, the individuals targeted are Russian politicians or military officers, as well as Ukrainians seen as undermining the territorial integrity, sovereignty, and independence of Ukraine. The EU continues to avoid sanctioning businessmen.

Switzerland

Switzerland sanctioned 28 individuals and two entities, all of whom were already sanctioned by the EU. Under the Swiss program financial intermediaries may no longer enter into new business relationships with the sanctioned individuals. These same individuals also may not transfer assets to Switzerland; however, existing business relationships involving the sanctioned individuals are not subject to this ban, but these relationships must be notified to the State Secretariat for Economic Affairs. The travel restrictions imposed by the EU include Switzerland via the Schengen Association Agreement; therefore, no special measures were added.

Canada

Canada added 12 individuals and 16 entities to their sanctioned list.

Although Russia was not implicated in separatist efforts to keep individuals from voting in the May 25th Presidential election, the situation in eastern Ukraine remains quite fluid and additional sanctions are possible if the United States, the EU, or Canada identify new persons complicit in the escalating violence, which began only hours after the election. As Crowell & Moring noted last month, these sanctions represent only the beginning of a potential escalation and that the G-7 is prepared "to move to broader, coordinated sanctions, including sectoral measures should circumstances warrant." Companies are advised to closely monitor developments and to contact the authors, or their regular Crowell & Moring contacts, with any questions.

New EU Sanctioned Individuals

- VOLODIN, Vyacheslav [Sanctioned by U.S. on April 28]
- SHAMANOV, Vladimir – Commander of the Russian Airborne Troops.
- PLIGIN, Vladimir – Chair of the Duma Constitutional Law Committee.
- JAROSH, Petr – Acting Head of the Federal Migration Service office for Crimea.
- KOZYURA, Oleg – Acting Head of the Federal Migration Service office for Sevastopol.
- PONOMARIOV, Viacheslav – Self-declared Mayor of Slaviansk.
- BEZLER, Igor – One of the leaders of self-proclaimed militia of Horlivka.

- KAKIDZYANOV, Igor – One of the leaders of armed forces of the self-proclaimed "Donetsk People's Republic."
- TSARIOV, Oleg – Member of the Rada.
- LYAGIN, Roman – Head of the "Donetsk People's Republic" Central Electoral Commission.
- MALYKHIN, Aleksandr – Head of the "Lugansk People's Republic" Central Electoral Commission.
- POKLONSKAYA, Natalia – Prosecutor of Crimea.
- SHEVCHENKO, Igor – Acting Prosecutor of Sevastopol.

New EU Sanctioned Entities

- PJSC CHERNOMORNEFTEGAZ [Sanctioned by U.S. on April 11]
- FEODOSIA – Provides services for the handling of oil.

New Canadian Sanctioned Individuals

- BOLOTOV, Valeriy [Sanctioned by EU on April 28]
- GERASIMOV, Valery Vasilevich [Sanctioned by EU on April 28]
- GIRKIN, Igor [Sanctioned by EU on April 28, identified by the EU as STRELKOV, Igor]
- KOVATIDI, Olga Fedorovna [Sanctioned by EU on April 28]
- MENYAILO, Sergei Ivanovich [Sanctioned by EU on April 28]
- NEVEROV, Sergei Ivanovich [Sanctioned by EU on April 28]
- PROKOPIV, German [Sanctioned by EU on April 28]
- PURGIN, Andriy [Sanctioned by EU on April 28]
- PUSHYLIN, Denys [Sanctioned by EU on April 28]
- SAVELYEV, Oleg Genrikhovich [Sanctioned by EU on April 28]
- SHVETSOVA, Ludmila Ivanovna [Sanctioned by EU on April 28]
- TSYPLAKOV, Sergey Gennadevich [Sanctioned by EU on April 28, identified by the EU as GENNADEVICH, Tsyplakov Sergey]

New Canadian Sanctioned Entities [All sanctioned by U.S. on April 28]

- AQUANIKA – A Russian water and drink manufacturer.
- AVIA GROUP LLC – Involved in ground infrastructure for the Business Aviation Center at Sheremetyevo International Airport in Moscow.
- AVIA GROUP NORD LLC – Provides management services for corporate aviation at Pulkovo International Airport in Saint Petersburg, Russia.
- CJSC ZEST – Designated for being owned or controlled by Bank Rossiya.
- INVESTCAPITALBANK – Designated for being owned or controlled by Arkady and Boris Rotenberg.
- JSB SOBINBANK – Designated for being owned or controlled by Bank Rossiya.
- SAKHATRANS LLC – A transportation company engaged in the construction of the bulk terminal for coal and iron ore exports in Muchka Bay near Vanino in Russia's far east.

- SMP BANK – Owned or controlled by Arkady and Boris Rotenberg.
- STROYGAZMONTAZH – A gas pipeline construction company owned or controlled by Arkady Rotenberg. Rotenberg created SGM Group in 2008 after acquiring multiple Gazprom contractors.
- STROYTRANSGAZ GROUP – A Russian construction group, comprising a number of business entities that specialize in different aspects of the construction industry.
- STROYTRANSGAZ HOLDING – A holding company for construction assets.
- STROYTRANSGAZ LLC – An infrastructure construction company.
- STROYTRANSGAZ OJSC – An electricity construction company.
- STROYTRANSGAZ-M LLC – An industrial construction company focused on oil, gas, petrochemical, and other civil engineering projects.
- THE LIMITED LIABILITY COMPANY INVESTMENT COMPANY ABROS – Designated for being owned or controlled by Bank Rossiya.
- TRANSOIL – A Russian based rail freight operator specializing in the transportation of oil and oil products.
- VOLGA GROUP – A Luxembourg based investment vehicle which manages assets on behalf of Mr. Timchenko.

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

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3) From Kiev to Caracas: New Sanctions Legislation Targeting Venezuela Makes Its Way Through Congress

In response to alleged human rights abuses and the recent crackdowns on civil protest, both houses of Congress have drafted potential new legislation to sanction Venezuela. Both measures are in response to reports that Venezuelan President Nicolás Maduro has met demonstrations protesting high inflation, scarcity of basic goods, and mismanagement of the country's oil wealth with repression. The House bill was passed by a voice vote on May 29; however, the Senate version is unlikely to advance to the floor unless the situation in Venezuela worsens with mass protests and increases in violence.

S. 2142, championed by Senator Marco Rubio (R-FL), seeks to provide the President with the authority to block and prohibit all transactions in all property and interests in property of persons responsible for the violence in Venezuela, as well as to prohibit the travel of designated persons to the United States. S. 2142 also appropriates $15M in Fiscal Year 2015 funds for civil society assistance directly or through nongovernmental organizations.

In comparison, H.R. 4229 is broader and includes not only similar blocking sanctions to S.2142, but also export control restrictions relating goods or technologies that are likely to be used to commit human rights abuses, as well as persons who engage in censorship against the citizens of Venezuela. Further, it calls for a reduction in the importation of petroleum and petroleum-origin products of Venezuelan origin to the United States. H.R. 4229 calls for $3M to be used as assistance to civil society in Venezuela.

S.2142 passed the Senate Foreign Relations Committee on May 20. Again, it has not yet been scheduled for a floor vote, nor has Senator Reid (D-NV), Senate Majority Leader, indicated when it might be scheduled. The Administration has consistently argued that sanctions would be counterproductive, but on May 21 during a visit to Mexico City, Secretary of State John Kerry appeared

to relax this position, warning of the possibility of sanctions as the Administration's patience with the Venezuelan government is growing thin.

Crowell & Moring will continue to closely monitor this legislation and provide updates as changes occur.

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

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4) Conflict Minerals Reports Still Due June 2: SEC Issues Updated Guidance after Court Decision

In response to an April 14th ruling by the U.S. Court of Appeals for the District of Columbia, the Securities and Exchange Commission (SEC) has issued updated guidance for regulated companies on the new conflict minerals reporting requirement rule mandated by Section 1502 of the Dodd-Street Wall Street Reform and Consumer Protection Act. The guidance clarifies that companies **still must file reports by June 2, 2014**, however, they are NOT required to describe their products as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable," as doing so was ruled a violation of the First Amendment by the Court.

Due to the Court of Appeals rejecting all of the challenges to the rule based on the Administrative Procedure Act and the Securities Exchange Act of 1934, the SEC guidance details its expectation that companies file any reports required on or before the due date of June 2, 2014. The Form SD and any related Conflict Minerals Report, should comply with and address those portions of Rule 13p-1 and Form SD that the Court upheld. Thus, according to the guidance, companies that do not need to file a Conflict Minerals Report should only disclose their reasonable country of origin inquiry and briefly describe the inquiry they undertook.

For companies required to file a Conflict Minerals Report, the SEC guidance indicates the report should include a description of the due diligence that the company undertook. If the company has products that fall within the scope of Items 1.01(c)(2) or 1.01(c)(2)(i) of Form SD, it would NOT have to identify the products as "DRC conflict undeterminable" or "not found to be 'DRC conflict free,'" but should disclose, for those products, the facilities used to produce the conflict minerals, the country of origin of the minerals and the efforts to determine the mine or location of origin.

The SEC has posted a detailed FAQ page designed to assist companies with filing reports.

Please do not hesitate to contact Crowell & Moring's International Trade Group with any questions regarding this guidance and its impact on your reporting requirements.

For more information, contact: John Brew, Jini Koh, Dj Wolff, Edward Goetz

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5) BIS and DDTC Publish Export Control Reform Changes for Satellites and Related Items

On May 13, 2014, the Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) concurrently published final rules amending the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) for **Satellites and related items**. The changes to the controls on radiation-hardened microelectronic microcircuits take effect 45 days after the publication date, while the remainder of the changes takes effect 180 days after publication.

This revision moves communication satellites that do not contain classified components; remote sensing satellites with certain performance parameters; any spacecraft parts, components, accessories, attachments, equipment, or systems that are not specifically identified in the revised category; and most radiation-hardened microelectronic microcircuits from the United States Munitions List (USML) to the Commerce Control List (CCL).

The rule also allows satellites controlled on the CCL that incorporate certain parts and components controlled by the USML to remain CCL-controlled, if certain conditions are met. It also removes from the USML certain spacecraft, while supporting the U.S. National Space Policy, by creating conditions that allow the U.S. Government to more easily host payloads on commercial satellites.

For more information, contact: Brian Gatta, Edward Goetz

CROWELL & MORING WELCOMES

We are pleased to welcome **Dr. Salomé Cisnal de Ugarte** as a Partner to the International Trade group in the Brussels office. Salomé graduated *summa cum laude* in law and economics from the University of Deusto and obtained a Master of Laws from Harvard Law School as well as a Ph.D. in law from the European University Institute in Florence. She focuses on European (EU) and national antitrust/competition law, as well as international trade and other EU regulatory matters. Prior to joining Crowell & Moring, Salomé worked in antitrust, competition and trade teams of two well-regarded law firms in Brussels, and as Director for European & regulatory affairs at Whirlpool Europe.

THIS MONTH IN TRADE – OTHER NEWS

Agency Enforcement Actions

Bureau of Industry and Security (BIS)

- May 20, 2014: U.A.E. Freight Forwarder Pays $125,000 Penalty for Export and Reexport to Syria. Aramex Emirates, LLC, a freight forwarding company located in Dubai, United Arab Emirates (U.A.E.) agreed to pay a $125,000 civil penalty in connection with the unlicensed export and reexport of network devices and software to Syria through the U.A.E. The

Department of Commerce said that the items in question could have been used by Syria to monitor internet activity and block pro-democracy websites.

False Claims Act (FCA)

- May 16, 2014: Federal Judge Refuses to Dismiss Two Importers' False Claims Act Case. A Florida federal judge decided to deny the motions to dismiss from C.R. Laurence Company Inc. and Southeastern Aluminum Products Inc. This False Claims Act (FCA) case alleges that the companies knowingly submitted false statement to the U.S. Customs and Border Protection (CBP) to avoid paying duties on imports of aluminum extrusions. The case is an extension of the U.S. Department of Commerce's decision in 2010 to issue anti-dumping and countervailing duties on imports of alumni extrusions from China.

Office of Foreign Assets Control (OFAC)

- Individual Has Agreed to Pay $29,340 to Settle Potential Civil Liability for Alleged Violations of the Iranian Transactions and Sanctions Regulations. OFAC alleged that from on or about May 21, 2007 to on or about November 12, 2009, an individual from Washington state exported, sold, and/or supplied unlicensed medical goods and/or related financial services from the United States to Iran in violation of the Iranian Transactions and Sanctions Regulation. There were 19 separate transactions valued at $49,341.
- Decolar.com, Inc. Has Agreed to Pay $2,809,800 to Settle Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations. Decolar.com, Inc., a Delaware company with headquarters in Buenos Aires, Argentina, together with its subsidiaries and affiliates (collectively, "Decolar") allegedly dealt in property in which Cuba or Cuban nationals had an interest in violation of the Cuban Assets Control Regulations. From March 2, 2009 through March 31, 2012, Decolar's non-U.S. subsidiaries assisted 17,836 persons with flight reservations for travel between Cuba and non-U.S. countries and/or hotel reservations for stays in Cuba, without authorization from OFAC. The base penalty for the apparent violations was $4,2460.000.
- American International Group, Inc. Has Agreed to Pay $279,038 to Settle Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations. OFAC alleged that American International Group, Inc. (AIG), an international insurance and financial services organization headquartered in New York, New York, and its subsidiaries were liable for 3,560 apparent violations of the Cuban Assets Control Regulations, 31 C.F.R. part 515, that occurred between January 1, 2006, and March 29, 2009. During that time period, two AIG subsidiaries in Canada issued or renewed three types of property and casualty insurance policies that insured Cuban risks of a Canadian corporate entity, one AIG subsidiary in Canada maintained a Director's and Officer's Liability insurance policy that insured certain directors and officers of three Cuban joint venture partners of a Canadian corporation, and another AIG subsidiary in Canada sold, renewed, or maintained in force 3,446 individual or annual multi-trip travel insurance policies in which the insured identified Cuba as the travel destination.

Securities and Exchange Commission (SEC) – FCPA

- May 9, 2014: Goldman Sachs' Investigated for Violating FCPA. Goldman Sachs' admitted in a filing with the U.S. Securities and Exchange Commission that regulators are investigating whether it violated the U.S. Foreign Corrupt Practices Act (FCPA) with certain hiring practices.

- May 9, 2014: Former PetroTiger CEO Indicted for FCPA Violations: A federal grand jury in New Jersey indicted PetroTiger Ltd.'s former CEO, Joseph Sigelman, for his alleged role in a scheme to pay bribes to foreign government officials for a $39 million.

For more information, contact: Michael Appel, Nancy Cruz

EU, China Sign Agreement on Trusted Trader Programs

On May 16, 2014, the European Union announced the signing of its first deal with China at the Joint Customs Cooperation Committee (JCCC) summit in Beijing. Under this agreement, both countries will agree to subject one another's trusted traders programs to more relaxed customs clearance procedures in order to cut down on red tape at the border for companies that have a proven track record of safety, reliability and compliance with relevant security standards.

According to the EU, this agreement with China now makes its trusted trader program, also known formally as the Authorized Economic Operator system, the most widely accepted in the world, having already sealed deals with the United States in 2012 and Japan in 2011. Algirdas Semeta, the EU Commissioner for Taxation and Customs, said that the "agreement is fully in the spirit of trade facilitation, by making customs procedures easier, cheaper and faster for our trusted operators. It is also in the spirit of growth, by improving our business environment and accelerating trade. Our citizens will benefit from greater protection too, as customs can focus more resources on where the real risks lie."

The EU and China also approved a new Strategic Framework for Customs Cooperation for the period of 2014 – 2017, replacing a previous framework signed in 2009. This framework is aimed at fostering cooperation between the parties in certain customs law areas such as trade facilitation and supply chain security.

Furthermore, the EU and China put forward a new action plan on the protection of intellectual property rights (IPR) also during the period of 2014 – 2017, which is intended to help the two countries coordinate their efforts to combat counterfeit goods and illicit trade. This new agreement expands on a preliminary IPR deal in 2009 by calling for an exchange of seizure statistics to detect general trends and risks as well as several other steps.

These new agreements are examples of initiatives between the EU and China indicating that they are willing to engage in bilateral initiatives. In March 2014, Chinese President Xi Jinping and two EU heads of state released a joint statement indicating a willingness to pursue negotiations for a free trade agreement, which came a few months after the EU's Foreign Affairs Council approved a negotiating mandate for a potential investment agreement with China.

For more information, contact: Salomé Cisnal de Ugarte, John Brew, Jini Koh, Carolyn Esko

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CBP Issues Final Rule Implementing U.S.-Panama FTA Provisions

On May 21, 2014, the U.S. Customs and Border Protection (CBP) issued final rules to implement provisions related to customs as well as preferential tariff treatment of the U.S.-Panama Trade Promotion Agreement (TPA), also known as the U.S.-Panama Free Trade Agreement. These rules take effect on June 20 and do not consist of any changes to the interim rules that were published by CBP on October 23, 2013.

The TPA was signed on June 28, 2007 and President Obama signed the U.S.-Panama Trade Promotion Agreement Implementation Act, which implemented the agreement into law, on October 21, 2011. CBP administers the provisions of the TPA as well as the implementing statute relating to imports of goods into the United States from Panama.

Customs-related provisions in the TPA require implementation through regulations and include both tariff and non-tariff provisions. A new Subpart S in Part 10 of the CBP regulations consists of the majority of the TPA implementing regulations that were presented in CBP Dec. 13-17. The amendments address import requirements and obligations, merchandise processing fees, rules of origin, temporary importations under bond, exporter obligations, inspections and examination of import merchandise, post-importation duty refund claims, and information collection.

According to the final rule, in cases where implementation is more appropriate in the context of an existing regulatory provision, the TPA regulatory text has been incorporated into an existing Part within the CBP regulations. The final rule also states that CBP Dec. 13-17 also sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those provisions and the new implementing regulations.

For more information, contact: John Brew, Jini Koh, Brian Gatta

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U.S.to Remove Russia from Generalized System of Preferences Trade Program

President Obama formally notified Congress in early May 2014 that Russia will be removed from the U.S. Generalized System of Preferences (GSP) trade benefits program, which allows for duty-free imports for certain goods. This action is effective once the President issues a proclamation formally withdrawing Russia's eligibility, White House press secretary Jay Carney said in a statement. No date for the proclamation has been set.

The White House stated Russia is "sufficiently advanced economically" and no longer requires the GSP program's special treatment. Russia was the ninth-largest beneficiary nation under the program in 2013 according to the U.S. Trade Representative with nearly $296 million in U.S. imports from Russia eligible for the trade benefits through last July.

Caitlyn Hayden, spokeswoman for the National Security Council, said that "Russia's actions regarding Ukraine, while not directly related to the President's decision regarding Russia's eligibility for GSP benefits, make it appropriate to take this step now."

Clients should contact Crowell with any questions they might have on the GSP program and any impact this decision might have on their business.

For more information, contact: John Brew, Brian Gatta, Edward Goetz

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CIT Upholds CBP's Certificate of Origin Presentation Practices for Post-Importation Claims

In an opinion issued on May 9, 2014, the U.S Court of International Trade (CIT) ruled against Ford Motor Company in a case in which Ford argued that CBP's requirements relating to certificates of origin should be similar whether the claims are made in a reconciliation context or a NAFTA post-import context since both are made pursuant to 19 U.S.C. 1520(d).

For the purposes of traditional NAFTA eligibility under 19 U.S.C. 1520(d), the requirement is that importers actually present certificates of origin when making a claim. Ford failed to do so in the factual circumstances underlying the case. For the purposes of making a post-import preference claim in the context of a reconciliation program, however, CBP's practice is to waive the need to present certificates of origin and only require that importers possess them.

According to the CIT, deciding the case on remand from the Court of Appeals for the Federal Circuit, CBP's practice of differentiating between the two scenarios was acceptable even though 19 U.S.C. 1520(d) applies to both. The CIT accepted CPB's explanation that because the reasoning for the waiver practice is different in the reconciliation context as compared to the traditional post-entry context, CBP was not taking an impermissibly contradictory interpretation of 19 U.S.C. 1520(d) in two different situations, but rather applying that statute appropriately in the context of two different statutory schemes; one which controls the reconciliation process, for which streamlining and automation are an integral part, and the other controlling only post-entry NAFTA claims.

For more information, contact: John Brew, Jini Koh, Brian Gatta

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ITC Says U.S. Sugar Industry Harmed by Imports from Mexico

On May 9, 2014, the United States International Trade Commission (ITC) made a preliminary determination that the U.S. sugar industry has been materially injured by reason of imports of sugar from Mexico. As a result of this affirmative determination, the U.S. Department of Commerce (DOC) will continue to conduct its antidumping and countervailing investigations on Mexican sugar. DOC will make its preliminary determinations later this year.

U.S. sugar producers filed the petitions in March, alleging the Mexican industry has exported sugar to the United States at dumping margins of 45 percent or more and has received substantial subsidies from Mexican federal and state governments. According to the petitioners, the unfair trade practices by the Mexican sugar producers and exporters will cost the U.S. sugar industry $1 billion this year.

U.S. sugar users are, however, criticizing the investigations; the Sweetener Users Association described the petitions as "nothing more than a diversionary tactic to shift blame for sugar market distortion from the failed U.S. sugar program to Mexico." According to the organization, the changes made to the sugar program in the 2008 farm bill caused U.S. sugar prices to rise above the world price and incentivized growers in both Mexico and the United States to increase production.

Under the North American Free Trade Agreement (NAFTA), Mexican sugar growers can export sugar to the United States on a tariff-free and quota-free basis. This, however, does not mean that they can export subsidized sugar to the United States or even export nonsubsidized sugar at prices below the fair market value.

The antidumping and countervailing investigations cover imports of raw, estandar (standard), and refined sugar derived from sugarcane and sugar beets. Liquid sugar, inedible molasses and specialty sugar (*e.g.,* rock candy, fondant, sugar decorations) are not included. At the preliminary phase of the investigations, ITC had to address three questions regarding the scope of domestic like product that corresponds to Mexican sugar: (1) whether ITC should define separate like products corresponding to raw and refined sugar; (2) whether ITC should define separate like products corresponding refined cane sugar and refined beet sugar; and (3) whether the domestic like product should include high fructose corn syrup. ITC answered no to each of these questions.

On the question of injury, five of ITC's six commissioners voted to find that there is a reasonable indication that U.S. sugar industry has been materially injured by reason of imports of sugar from Mexico. Commissioner Rhonda K. Schmidtlein, who was sworn in recently, did not participate in the investigations. Final determinations by ITC and DOC may not be issued until 2015.

For more information, contact: Daniel Cannistra, Pierce Lee

Treasury Publishes Five Admin Rulings Clarifying Money Transmitter Status under 2011 Bank Secrecy Act

On April 29, 2014, the Financial Crimes Enforcement Network (FinCEN) issued five Administrative Rulings providing clarification on how exemptions from money transmitter status may or may not apply to certain business models under the definition of money transmitter as stated in the 2011 modifications to the Bank Secrecy Act (BSA). Taken together, the five rulings consistently apply the definition of "money transmission services" and the specific exemption from money transmitter status providing useful insight to companies on how FinCEN might adjudicate different circumstances in the future.

The ruling FIN-2014-R008 considered whether a company providing an armored car coin and currency exchange service is a money transmitter and whether the armored car service exemption would apply. FinCEN ruled the latter exemption does not apply as the transaction consists of additional activity above and beyond the physical transportation of currency and/or coin; however, because the service does not involve the "acceptance and transmission of currency, funds, or other value that substitutes for currency to another location or person," FinCEN determined the company is not a money transmitter. This is because the amount of money delivered to the customer's location and then returned to the company's own vault is exactly the same.

FIN-2014-R007 deals with the specific exemption from money transmission status for persons that only provide the delivery, communication, or network data access services used by a money transmitter to supply money transmission services. In this instance, FinCEN examined the case of a company that rents a computer system that mines crypto currencies to third parties. As the third party benefits directly and exclusively from the mining work, renting such equipment, in and of itself, does not make the company a money transmitter.

FIN-2014-R005 and FIN-2014-R004 are similar in that both companies facilitate internet-based transactions to buyers and sellers. The former provides escrow services to individuals and companies, while the latter offers secure transaction

management for goods and services. The companies were ruled as not being money transmitters because the acceptance and transmission of funds in both cases does not constitute a separate and discrete service in addition to the underlying transaction; they are a necessary and integral part of the service itself. This is because both companies, as part of their service, ensure the terms and conditions of the transaction are met protecting the interests of both parties. In support of this conclusion, FinCEN cited Ruling 2004-4, in which a debt management company was found not to be a money transmitter for the very same reason. In that case, the payment negotiated was binding on the creditor and debtor and required the debt management company as the payment processor.

FIN-2014-R006 represents the opposite of R005 and R006. The company also provides on-line transactions, in this case for real-time deposit, settlement, and payment services to banks and consumers. The key difference is that the company does not provide any verification or validation of the transaction; they are effectively 'neutral' when it comes to the actual discharge of their service. For this reason, FinCEN ruled the company was a money transmitter because they were not integral to the transaction.

Determining your status as a money transmitter is necessary because money transmitters must register as a money services business (MSB) under the BSA. Clients should contact Crowell with any questions they might have on their circumstances and whether or not they should be registered as an MSB.

For more information, contact: Cari Stinebower, Edward Goetz

CBP to Expand ACE Processing Capabilities for More Timely Cargo Release Decisions

On May 1, 2014, the U.S. Customs and Borders Protection (CBP) published a notice in order to increase trade processing capabilities through an expanded automated commercial environment (ACE) cargo test. This test will allow brokers and importers to qualify for more rapid decisions regarding the release of cargo. ACE is the new import and export information system being developed in order to streamline business processes, facilitate trade growth and reduce costs by allowing users to submit Customs documents electronically.

Those who would like to qualify must be a self-filing importer or broker who can file ACE entry summaries certified for cargo release. In addition, ACE Cargo Release Data elements, ACE Entry Summary data and three data elements must be submitted, which include the seller name and address, the buyer name and address, as well as the manufacturer/supplier name and address. Once the documents are received, they will be processed and Customs will electronically transmit its decision to the filer.

This test began on April 6, 2014 and will run through November 1, 2015. At this time, the test is only available to "01" (consumption) and "11" (informal) commercial entries filed in the air, ocean and rail modes of transportation at specified ports. The test may be applied to additional modes of transportation, which will be announced via the Federal Register. CBP invites more parties to join the test over the coming months.

For more information, contact: John Brew, Jini Koh, Nicholas DeLong

FinCen Alert: Foreign Persons Using St. Kitts and Nevis' Citizenship-by-Investment Program to Facilitate Financial Crime

The Financial Crimes Enforcement Network (FinCEN) issued, on May 20, 2014, an advisory to alert Financial Institutions (FIs) that certain foreign nationals are abusing the Citizenship-by-Investment program sponsored by the Federation of St. Kitts and Nevis (SKN) for illicit financial activity. FinCEN believes the program's lax controls make it attractive to bad financial actors who want to mask their identity and geographic background for the purposes of evading U.S. or international sanctions or to engage in other financial crime.

FinCEN recommends FIs mitigate this risk through customer due diligence, including risk-based identity verification consistent with existing customer identification program requirements.

Clients should contact Crowell & Moring with any questions they might have on how to prevent transactions with anyone abusing this program.

For more information, contact: Cari Stinebower, Edward Goetz

CROWELL & MORING SPEAKS

John Brew will be speaking at the American Conference Institute's 9th National Forum on Import Compliance & Enforcement on June 11, 2014. The session will be an import workshop on customs enforcement of other government agencies' (FDA, CPSC, FDA, DOT, EPA, Commerce and others) regulations.

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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

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

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

Christopher Monahan
Counsel – Washington, D.C.
Phone: +1 202.624.2529
Email: cmonahan@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

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

Pierce Lee
Associate – Washington, D.C.
Phone: +1 202.508.8780
Email: plee@crowell.com