CLIENT ALERT

This Month in International Trade - October 2012

Nov.09.2012

THIS MONTH'S TOP FIVE DEVELOPMENTS

1) Publication of New EU GSP Legislation

On October 31st the EU published its revised Generalize System of Preferences (GSP) arrangements for developing countries most in need (Regulation (EU) 978/2012 of the European Parliament and of the Council).

The objectives of the new GSP arrangements are to focus help on those countries truly in need, to strengthen the GSP+ regime (which in general means a complete exemption from ordinary tariffs) as an incentive to good governance and sustainable development, and to make the scheme more transparent, stable and predictable.

However, the tariff preferences provided under the new preferential arrangements will take effect only from 1 January 2014. Until 31 December 2013, the preferences defined by Council Regulation (EC) No. 732/2008 will continue to apply.

The beneficiaries of the reformed GSP are 89 in total: 49 least developed countries in the Everything But Arms (EBA) scheme and 40 other low and lower-middle income countries.

A number of countries will no longer benefit from the scheme, including:

- Countries that have preferential access to the EU which is at least as good as under GSP – for example, under a Free Trade Agreement or a special autonomous trade regime.
- Countries which have achieved a high or upper middle income per capita, according to the World Bank classification, such as Brazil, Malaysia, Russia and Saudi Arabia.
- A number of overseas countries and territories, which have an alternative market access arrangement for developed markets.

With the exception of the EBA arrangement, which has no expiration date, the new scheme will last 10 years, in contrast to the current situation where the arrangements are subject to review every three years. This will make it easier and more attractive for EU importers to purchase from GSP beneficiary countries.

The new GSP also incorporates some expansion in products and preference margins for 23 tariff lines.

For further details, please see the following links:

Press release
Webpage on the GSP regulation

List of products which have been incorporated in the new GSP regulation
Complete text of the new GSP regulation

2) OFAC Releases ITR Amendments

On October 22, 2012, the Department of the Treasury's Office of Foreign Assets Control published the Iranian Transactions and Sanctions Regulations ("ITSR"), replacing the Iranian Transactions Regulations ("ITR"). The ITSR update the ITR provisions to incorporate Executive Order 13599 (February 5, 2012) and sections 1245(c) and (d)(1)(B) of the National Defense Authorization Act of 2012. The ITSR do not reflect changes to the Iranian sanctions program implemented pursuant to the more recent Iran Threat Reduction and Syria Human Rights Act of 2012 (including Executive Order 13628 of October 9, 2012). The ITSR also do not contain all of the sanctions provisions targeting the Government of Iran and must be read together with the Iranian Financial Sanctions Regulations, 31 C.F.R. Part 561; the Iranian Human Rights Abuses Sanctions Regulations, 31 C.F.R. Part 562, the Global Terrorism Sanctions Regulations, 31 C.F.R. Part 594; and, among others, the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. Part 544.

The Iranian Transactions Regulations

In relevant part, the ITSR adds Section 560.211 to reflect the blocking prohibitions in section 1 of EO 13599 (targeting the Government of Iran, the Central Bank of Iran and financial institutions in Iran). To reflect General Licenses A and B, issued on February 6, 2012, the new ITSR contains Sections 560.211(e) and (f) and 560.532. These subsections establish that the prohibitions in Section 560.211 apply except to the extent transactions are generally or specifically authorized. Section 560.532 also generally licenses, for exports of goods pursuant to the Trade Sanctions Reform and Export Enhancement Act ("TSRA"), payment through a letter of credit issued by an Iranian financial institution whose property or interests in property are blocked only because the entity is owned or controlled by the Government of Iran. Also relevant is Section 460.405 which provides that transactions ordinarily incident to a licensed transaction and necessary to give effect thereto are authorized except (1) payments for transfers of funds and (2) ordinarily incident transactions not explicitly authorized under the terms of the license and involving a debit to a blocked account or a transfer of blocked property. Payments for transfers of funds are addressed at Section 560.516 which authorizes U.S. depository institutions and registered broker dealers to process transfers of funds from Iran or involving persons or the Government of Iran in Iran if the underlying transaction has been generally or specifically licensed. Section 560.516 does not include authorization for money services businesses and does not authorize debiting or crediting an Iranian account.

The Iranian Transactions Regulations also now generally licenses the export and re-export of certain medicines (not including cosmetics) and basic medical supplies to Iran. Authorized medicines do not include non-NSAID analgesics, cholinergics, anticholinergics, opioids, narcotics, benzodiazepines, and bioactive peptides. 31 C.F.R. 560.530(a)(3)(iii). Items that qualify as "Basic Medical Supplies" are identified on OFAC's website on theIran sanctions page (but do not include replacement parts). The general license does not include exports to military or law enforcement end-users (exports to these end-users still require specific OFAC authorization).

Executive Order 13628

EO 13628 of October 9, 2012 authorizes the implementation of certain sanctions set forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRA") and institutes additional sanctions with respect to Iran. In addition to supplementing the Treasury's blocking authorities to include those engaged in human rights abuses (including those exporting certain goods, services or technology used in human rights abuses in Iran) and those engaged in censorship, the Executive Order implements Section 218 of the ITRA and prohibits entities owned or controlled by a U.S. person and established or maintained outside the United States from knowingly engaging in any transaction, directly or indirectly, in which a U.S. person could not engage. Section 218 of the ITRA is drafted broadly to include within the definition of "entity" partnerships, association, trusts, joint ventures, corporations or other organizations.

3) Brazil Tariff Reductions

The Brazilian Foreign Trade Chamber (CAMEX) reduced import tariffs on more than 300 capital goods and IT products, by means of CAMEX Resolutions n. 74 and 75, both published in the Official Gazette on Oct 31, 2012. The tariffs on the specified capital goods, such as metal containers for use in garbage collection trucks, marine engines piston, natural gas furnaces and equipment for desalination of seawater, decreased from 14% to 2%, as long as the products are brought to Brazil in new condition. On the IT products side, the tariffs went down from 16% to 2% on large format and photo quality printers, and were reduced to zero on seven other categories of new computer goods, including some types of video converters and intercom equipment.

This provisional tariff regime is part of the so-called "ex-tariff products" – a stimulus mechanism created to improve productive investments in Brazil by temporary tariff reductions on IT, telecom and capital goods that are not manufactured in Brazil. The goal is to promote technological development throughout the industry and to create a multiplier, positive effect on jobs and income. The total number of ex-tariff products approved in 2012 has now reached 2,134, and the most benefited country is the United States (responsible for 45% of the imports under the temporary regime), followed by Germany (10%), and Italy (8%).

4) CBP Announces Changes to ISA

The U.S. Customs and Border Protection (CBP) announced changes to the Importer Self-Assessment (ISA) program regarding the requirements for participation in, and benefits under, the program. The ISA program allows participants an opportunity to assess their own compliance with U.S. Customs and Border Protection (CBP) laws and regulations rather than undergoing comprehensive CBP audits.

A company that has successfully undergone a CBP Focused Assessment (FA) audit may be eligible to transition into the ISA program without further CBP review within twelve (12) months from the date of the FA Report. After Regulatory Audit, Office of International Trade, determines that the company represents an acceptable risk to CBP, the company must also meet the following requirements:

- The company is a U.S. or Canadian resident importer
- The company obtains Customs-Trade Partnership Against Terrorism (C–TPAT) program membership
- The company develops a risk-based self testing plan
- The company agrees to meet all of the ISA program requirements

Companies eligible to participate under this new policy will not need to undergo an Application Review Meeting, which is normally required for ISA applicants. The program modifications set forth in this announcement are effective October 5, 2012. Companies that are members of the ISA and C-TPAT programs are also eligible to participate in the Center of Excellence and Expertise (CEE) for their respective industry.

5) What an International Services Agreement Would Mean for Globally Engaged Companies

Globally engaged companies have many opportunities to use international trade and investment rules for their business objectives. International economic agreements are typically negotiated in places like Washington and Brussels and Beijing, and government negotiators speak a particular language and respond to particular political dynamics. Companies operating across borders, on the other hand, do business well beyond national capitals, use their own vernacular, and confront different sets of opportunities and challenges.

To continue reading, please see ourprior client alert.

THIS MONTH IN TRADE – OTHER NEWS

CBP Reschedules Trade Symposium After Hurricane Sandy

U.S. Customs and Border Protection (CBP) has rescheduled the 2012 East Coast Trade Symposium after the original event was postponed due to Hurricane Sandy. The Symposium will be held at a yet-to-be-determined venue in Washington, DC on November 27-28, 2012. The theme for the Trade Symposium is "Expanding 21st Century Global Partnerships." CBP will provide a live Webcast of the event which will be recorded for subsequent on-demand viewing over the Internet.

CBP will refund registration fees to registrant credit cards by November 17. Current registered attendees will receive priority seating to re-register for the rescheduled Symposium dates. CBP will provide updated re-registration and venue information, included updated information regarding the Symposium hotel room block, on its website. Inquiries regarding the registration process may be sent to tradeevents@dhs.gov

Crowell to Host CBP Symposium Happy Hour – New Date

Crowell & Moring's International Trade Practice will host a happy hour at Brasserie Beck on Tuesday, November 27, following the first day of the rescheduled 2012 CBP East Coast Trade Symposium. We look forward to catching up with old colleagues and making new friends. Please contact Elliot Dritch at edrtich@crowell.com for details and to R.S.V.P for the event.

USITC Report on Proposed ITA Expansion

On October 24, the U.S. International Trade Commission (USITC) delivered its first report to the U.S. Trade Representative (USTR) on the proposed expansion of the Information Technology Agreement (ITA). Under the ITA, signatory countries agree to eliminate tariffs on certain information and communications technology (ICT) products.

The report covers a proposed expansion list of over 400 ICT product descriptions (within 100+ harmonized tariff codes) for possible duty free treatment under the ITA. The report provides information on product use concerning both the ICT and non-ICT purposes. It also identifies 11 product descriptions that U.S. industry and other interested parties view to be "import sensitive." The report is available on the USITC website.

CBP Expands Air Cargo Advance Screening Pilot Program

Under the Trade Act of 2002, advance information for commercial air cargo must be submitted to CBP no later than the time of departure of the airport for the United States (from certain locations) or four hours prior to arrival in the United States for all other locations. Under the Air Cargo Advance Screening (ACAS) Pilot Program, initiated in December of 2010, the time frame for transmission of the ACAS data is revised and participants agree to submit a subset of the required ACAS data elements at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. This information assists CBP with targeting and enforcement efforts of high-risk cargo. CBP is formalizing and expanding the ACAS program and accepting application from new ACAS pilot participants until November 23, 2012. Eligible participants include express couriers, passenger carriers, all-cargo carriers, and freight forwarders.

U.S.-Panama FTA Enters Into Force

The U.S. – Panama Trade Promotion Agreement (free trade agreement or "FTA") entered into force on October 31, 2012. The agreement was finalized in 2006, signed by both nations in June 2007, and approved by Panama in July 2007 and the U.S. in October 2011. Panama has complied with all of its FTA obligations such as amending its tariff schedules and overhauling intellectual property regulations before the pact takes effect.

Upon entering into force, the FTA allows duty-free treatment for over 86% of U.S. exports of consumer and industrial products to Panama. The products covered include information technology equipment, agricultural and construction equipment, aircraft and parts, medical and scientific equipment, environment products, pharmaceuticals, fertilizers, and agrochemicals. For U.S. agricultural exports to Panama, nearly half of current trade will now receive duty-free treatment, while most of the remaining tariffs will be eliminated within 15 years. The FTA also grants U.S. companies greater access to Panama's $20.6 billion service market, including financial, telecommunications, and professional services.

The U.S. – Panama FTA is the third U.S. FTA entering into force this year, following the implementation of similar pacts with South Korea and Colombia earlier in 2012. Panama is one of the fastest growing economies in Latin America, expanding 6.2% in 2010, with similar annual growth forecast through 2015.

Congress Expected to Take Up MTBs; Russia MFN in Lame-Duck Session

The House Ways and Means and Senate Finance trade subcommittees, who have jurisdiction over trade matters, are expected to take up the miscellaneous tariff bill (MTB) legislation during the lame-duck session, which has been tentatively scheduled for November 14 - December 13, 2012. MTBs are individual duty suspension bills that temporarily suspend tariffs on certain imports that are intended to lower non-domestically available inputs for manufacturing but can include finished goods. The omnibus legislation will include renewal of suspensions enacted in 2010 and set to expire at the end of the year, as well as new bills. If the existing MTBs are not renewed, they would expire automatically on December 31st. As part of the MTB process, the

International Trade Commission has completed its analysis but reviews by the Department of Commerce and U.S. Trade Representative remain pending.

In addition, Congress is expected to vote to remove Russia from the Jackson-Vanik amendment which would allow President Obama to grant permanent most favored nation (MFN) status to Russia. Given Russia's recent entry as a member of the World Trade Organization (WTO), the U.S. must extend MFN status to Russia to take full advantage of the latter's WTO commitments and responsibilities. For more details, please click here to see our prior alert.

Australia the "Connecting Rod"

Australian businesses should capitalize on the numerous opportunities due to its strategic position in the region by increasing trade between itself and Asia and Latin America. In the White Paper published by the Australian government in October, Australia aims to increase all trade with Asia to "at least one-third of [Australia] GDP by 2025, up from one-quarter in 2011." Australian Prime Minister Julia Gillard states Australia will be the "connecting rod" between Latin American and Asian markets spanning the Pacific Ocean.

With this purpose in mind, Australia has launched talks with members of the Pacific Alliance (Chile, Colombia, Mexico and Peru), in order to join them. The trade bloc was established on April 27, 2011 with the signing of the Lima Declaration and formally launched on June 6, 2012 to boost their trade with Asia, during the Fourth Summit of the Pacific Alliance held in Antofagasta, Chile. The combined GDP of the Pacific Alliance countries represents 35% of all Latin America GDP. Canada, Costa Rica and Panama are also negotiating to join the Pacific Alliance.

Australia is also a negotiating member of the Trans-Pacific Strategic Economic Partnership (or "TPP"), which includes other negotiating members Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, U.S., Singapore and Vietnam. The 15th TPP negotiating round will be held on December 3-12, 2012 in Auckland, New Zealand.

Currently, Australia has free trade agreements among others with New Zealand and the Association of Southeast Asian Nations (ASEAN), including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The trade bloc was established on August 8, 1967, with the signing of the ASEAN Declaration. Additionally, in November 2012 Australia will launch negotiations with the ASEAN, China, India, Japan, South Korea and New Zealand to grant the Regional Comprehensive Economic Partnership (RCEP). This group is expected to be the biggest free trade market in the world.

Canada Eliminates Tariffs On Certain Products

On October 11, 2012, Canadian Minister of Finance Jim Flaherty announced that the Canadian government was eliminating customs duties on certain tariff classification subheadings, which is expected to save Canadian businesses about $1.7 million annually. The products that will now be duty-free fall within five general categories: Palm oil flakes for use in the manufacture of food products; Trays designed to hold discs for use in the manufacture of CD or DVD cases; Fabric shells for use in the manufacture of bed linens such as duvets, comforters, featherbeds, cushions and pillows; Crossing pieces for guard rails; and Certain chassis and motors for use in the manufacture of ambulances.

CROWELL AND MORING SPEAKS

Cari Stinebower joined a panel of OFAC "alumni" at the American Bar Association (ABA) OFAC Facilitation Program, "Know It When You See It?" on November 8, 2012.

John Brew, Chris Wilson and **Addie Cliffe** will speak on "Solving International Business Challenges -- Maximizing Opportunities and Minimizing Risks" at the Associate of Corporate Cousel (ACC) November CLE at the Hyatt Santa Clara, November 13 in Santa Clara, CA, and again on November 14 at the Epic Roasthouse in San Francisco, CA. To register for either event, please click here.

Laurent Ruessmann and **Francesca Condello** are participating in the master class "Survival Guide on Customs Valuation: Ticking All the Boxes and Challenging Customs Rulings" as part of C5's 2nd Advanced Forum on Customs Compliance at the Guoman Charing Cross Hotel in London, UK. The master class will be held on Wednesday, November 14 (after the Forum which runs November 12-13). To register please click on the link above or email registrations@C5-Online.com.

John B. Brew will be speaking on "Getting Customs Valuation Right" and moderating a panel on "Key Government Agencies" at the American Conference Institute (ACI)'s U.S. Customs Compliance "Boot Camp" at the Washington Plaza Hotel, November 27-28, 2012, in Washington, D.C. Please note: Crowell clients attending ACI events receive a discount; please contact your Crowell representative for details.

Cari N. Stinebower will speak on "Doing Business in Burma/Myanmar: What You Can and CANNOT Do Under New, Eased Sanctions Restrictions," at ACI's OFAC Boot Camp, in New York City, December 5-6, 2012.

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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