

CLIENT ALERT

This Month in International Trade - October 2014

Nov.06.2014

THIS MONTH'S TOP TRADE DEVELOPMENTS

1) CBP Proposes New Rule to Gather More Information about Companies and its Officers; Comment Window Ends December 8th

Hot on the heels of last month's [decision](#) to hold a corporate officer personally liable for penalties related to violations of CBP laws comes a [proposed rule from CBP](#) to revise the Customs Form (CF) 5106 in order to gather additional information about companies and its officers. The proposed changes to the CF 5106 may be found [here](#).

Currently, all importers of record file a CF 5106, which is a one page form that provides CBP basic information about the importer. The proposed new version of the form is called "Create/Update Importer Identity Form" and adds a second page for expanded company information, requiring additional details about the importer's business structure and officers responsible for import activity.

CBP specifies on the new form that the company officers identified must have importing and financial business knowledge of the company, and must have the legal authority to make decisions on behalf of the company.

CBP's rationale for requiring the additional information is that this information will enhance CBP's ability to make an informative assessment of risk prior to initial importation and provide improved awareness regarding the importing company and its officers who have chosen to conduct business with CBP. Given the recent decision imposing personal liability on corporate officers, there is a concern that the new CF 5106 will provide a vehicle for CBP to impose additional liability on corporate officers involved in importing activity, who are listed on the new CF 5106.

Companies impacted by this proposal are encouraged to provide comments to CBP by the December 8th deadline. The agency has directed that all written comments be sent to:

U.S. Customs and Border Protection
Attn: Tracey Denning, Regulations and Rulings, Office of International Trade
90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177

Clients with questions on the proposed rule should contact one of Crowell's customs attorneys, who have years of experience in converting company concerns into impactful comments.

For more information, contact: John Brew, Alex Schaefer, Jini Koh, Edward Goetz

2) Commerce Releases AD and CVD U.S. – Mexico Sugar Settlement Agreements for Review; Comment Period Ends November 10th

After extensive consultations with the Mexican government on the trade dispute over sugar with the U.S., Commerce has released for review draft antidumping (AD) and countervailing duty (CVD) agreements. A fact sheet released by the International Trade Administration (ITA) may be found [here](#).

U.S. sugar producers appear to support the agreement, while the Sweetener Users Association is asking all parties to consider the ramifications of entering into a "managed trade agreement" on sugar.

Comments for both draft agreements MUST be submitted electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Electronically-filed documents must be received successfully in their entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time (ET) on November 10th. Likewise, documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the same date.

To speak with the ITA directly, contact Sally Gannon at (202) 482-0162 or Judy Rudman at (202) 482-0192.

Clients with questions on how to best comment on the proposals should contact one of Crowell's trade remedies attorneys.

For more information, contact: Dan Cannistra, Alex Schaefer

3) 'Reckless Disregard for U.S. Sanctions Programs' Cause for \$128,704 Penalty to Companies Providing Insurance Support Services to SDNs

On October 29th, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) announced a \$128,704 settlement with three Miami-based insurance affiliates of an international health care group headquartered in the United Kingdom. These entities were found to have paid insurance claims as well as to have provided a variety of "insurance support services" to persons designated on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) or for medical treatments in Cuba.

Specifically, OFAC alleged that the Bupa Insurance Company (BIC), Bupa Worldwide Corporation (BWW), and USA Medical Services Corporation (USAMED) (collectively known as Bupa Florida) engaged in two types of violations.

First, Bupa Florida "processed and paid" reimbursement claims to a policyholder for medical treatments in Cuba. The treatment was the only linkage identified to Cuba; OFAC did not allege that the policyholder was a Specially Designated National (SDN) nor did it allege that the policyholder was a Cuban national or that the payment was made to Cuba.

Second, BWW and USAMED both provided "insurance support services" for health care policies which were issued to, or provided coverage for, persons on OFAC's SDN List. BWW's support "encompassed a wide range of marketing, administrative,

and operational services, including the retention of agents, premium processing, underwriting, claims payments, and customer service, as well as issuing claim and reimbursement checks." USAMED undertook similar activities, providing "claims processing services that included claim pre-authorization, claim review, and claim adjudication services."

Although OFAC considered the apparent violations to be non-egregious, it nonetheless identified several aggravating factors including: failure to screen "health insurance policyholders, dependents, or providers against the SDN list;" actual knowledge (or reason to know) that insured policyholders were SDNs; and apparent lack of an OFAC Compliance Program.

Clients with questions on how to establish effective compliance programs should contact one of Crowell's sanctions attorneys.

For more information, contact: Cari Stinebower, Dj Wolff

4) No Nuclear Deal in Sight Between Iran and the West with November 24th Deadline Fast Approaching; Next Meeting November 18th

The final round of talks under the Extended Joint Plan of Action (JPOA) will begin on November 18th in Vienna, only six days ahead of the November 24th deadline. With both sides deadlocked over a host of issues, reaching a final agreement on Iran's nuclear program by the self-imposed date looks less likely unless both sides make major concessions.

Significant roadblocks include: the number and type of centrifuges Iran would be allowed to retain; the fate of the underground uranium enrichment site at Fordow; the design of the Arak heavy-water nuclear reactor; the timing of any lifting of sanctions; and the time period for monitoring Iranian compliance with the agreement.

A further complication is whether or not the conservative constituencies in both the United States and Iran would accept a deal made by their respective Presidential Administrations. Although Iran's Supreme Leader, Ayatollah Ali Khamenei, has allowed the negotiations to continue, groups such as the Iranian Revolutionary Guards Corps (IRGC) appear unwilling to accept any compromise with the West. Likewise, in the United States a substantial contingent of Congressmen and Senators appear willing to accept only a deal that features minimal U.S. compromise.

Sanctions, in conjunction with continued downward pressure on world oil prices, continue to impose costs on the Iranian economy and raise the question of how long the population will accept a future with little prospect for improvement.

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

5) Canada & Mexico Close to Imposing Retaliatory Tariffs Against the U.S. in 2015 over Country of Origin Labeling

In an October 20th [Compliance Panel Report](#), the World Trade Organization (WTO) ruled that the U.S. has not brought its country of origin labeling (COOL) regulations fully in line with WTO guidelines, bringing Canada and Mexico one step closer to

imposing retaliatory tariffs. If the U.S. appeals the decision and loses, Canada and Mexico will have the right under the WTO framework to impose retaliatory tariffs of 100 percent starting in mid-2015.

This trade dispute originated with U.S.' 2008 Farm Bill, which provided that only beef that is *exclusively* born, raised, and slaughtered in the United States may be considered to be of U.S. origin and labeled accordingly. In addition to beef, a number of other products are covered and subject to similar restrictions – these include veal, lamb, pork, chicken, goat, wild and farm-raised fish and shellfish, perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts.

In addressing the complaints that Canada and Mexico subsequently filed with the WTO, both the WTO's Dispute Settlement Panel and its Appellate Body determined that the U.S. COOL regulations were inconsistent with the U.S.' WTO obligations. In response, the U.S. Department of Agriculture (USDA) modified its regulations in 2013; the statutory language, however, remains unchanged. Following a review by the WTO Compliance Panel, the October 20th report summarizes the Compliance Panel's findings, namely that the 2013 USDA regulatory amendments remain inconsistent with the U.S.' WTO obligations. The U.S. is likely to appeal that determination, but if the Appellate Body agrees with the Compliance Panel, Canada and Mexico will have the right to proceed with the imposition of retaliatory tariffs. Products preliminarily named as targets of such retaliatory tariffs include various meat products, agricultural products, wine, ketchup, cereal, mattresses and jewelry, among others.

The good news for affected U.S. companies is that there is still time to broker a negotiated settlement between the three countries before the tariffs are implemented. Clients with questions on the status and implications of this dispute should contact one of Crowell's trade remedies attorneys, who specialize in finding solutions to complex customs problems.

For more information, contact: Jonathan (Josh) Kallmer, Jini Koh

THIS MONTH IN TRADE

Agency Enforcement Actions

Office of Foreign Assets Control (OFAC)

- The second of two men charged with engaging in "public relations, political consulting and lobbying" of U.S. officials to lift sanctions against Zimbabwean President Robert Mugabe and other top government officials was found guilty on October 10th in the U.S. District Court in Chicago of one of three counts of lobbying on behalf of Zimbabwean government officials. The other individual pleaded guilty in April 2014 and was sentenced to seven months of incarceration. OFAC does not consider lobbying activities as included in the General License for legal services under the Zimbabwe Sanctions Regulations and therefore the activities constitutes prohibited services on behalf of an SDN.
- On October 31st, Indam International, Inc. (Indam) of Houston, Texas, agreed to pay \$44,850 to settle potential civil liability for apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR). Between July 4, 2006, and October 23, 2008, Indam attempted to export or exported nine shipments of goods, collectively valued at \$27,846, from the United States to the United Arab Emirates, despite having reason to know that the shipments were intended specifically for supply, transshipment, or re-exportation to two oil drilling rigs destined for or located in Iranian waters.

Bureau of Industry and Security (BIS)

- On October 2nd, Robbins & Myers Belgium S.A., a wholly-owned subsidiary of Robbins & Myers Inc., pleaded guilty to four counts of violating the International Emergency Economic Powers Act and the Export Administration Regulations. The guilty plea stemmed from four illegal exports, re-exports and/or trans-shipments in 2006 of stators (important components of oil extraction equipment). The stators had been made from steel milled in the U.S. and were sold to a customer operating oil fields in Syria. As part of its plea agreement Robbins & Myers Belgium agreed to pay a total of \$1 million in criminal fines and to serve a term of corporate probation. Also, Robbins & Myers Belgium forfeited the gross proceeds received to the government and has entered into a civil settlement with the Department of Commerce requiring the company to pay \$600,000 in civil penalties.
- On October 8th, Wind River Systems of Alameda, Calif., a wholly-owned subsidiary of Intel Corporation, agreed to a \$750,000 civil penalty to settle charges that it sold encryption software products to foreign government customers and to organizations identified on the BIS Entity List without the required Department of Commerce licenses. In April 2012, Wind River Systems voluntarily disclosed to BIS that between 2008 and 2011 the company made 55 exports of operating software valued at \$2.9 million to governments and various end users in China, Hong Kong, Russia, Israel, South Africa, and South Korea.
- On October 10th, Hsein Tai Tsai, a former resident of Taiwan, pleaded guilty before U.S. District Judge Charles Norgle in Federal Court in Chicago to conspiracy to violate U.S. regulations regarding the proliferation of weapons of mass destruction. A sentencing status hearing was set for Dec. 5. Tsai faces a maximum sentence of five years in prison and a \$250,000 fine. Under the terms of his plea agreement, the government will recommend a sentence of approximately 30 months in prison provided Tsai continues to fully cooperate with the United States.
- On October 23rd, BIS denied export privileges for a period of ten years to two individuals and one entity that conspired to export computers from the United States through the United Arab Emirates (UAE) to Iran without the required U.S. Government authorization.

For more information, contact: Edward Goetz

OTHER MAJOR TRADE TOPICS

1) Lands' End Is the Latest Retailer Hit with 'Made in USA' Suit – Are You Compliant with FTC and State Labeling Laws?

A California resident has filed a lawsuit seeking to represent nationwide and statewide classes of Lands' End customers over deceptive labeling of apparel as being produced in the U.S. to enable the retail chain to charge higher prices. Under the Federal Trade Commission's (FTC) "Made in the U.S.A." guidelines, in order to be marked and sold as "Made in the U.S.A.," a product must contain "all or virtually all" U.S. content.

The plaintiff purchased a tie from a Lands' End outlet, which was described as 'Made in U.S.A.,' but the fabric tag attached to the tie said that it was "wholly made" in China.

This class action is the latest in a number of actions against retailers accusing them of deceptive advertising in violation of federal (Lanham Act) and state laws. Similar accusations have been filed against Macy's, Nordstrom, and grocery chain Trader Joe's Co.

For more information, contact: John Brew, Jini Koh

2) OFAC Round-Up

On October 23rd, speaking at the Carnegie Endowment for International Peace, Secretary of the Treasury Jack Lew announced his department's strategy for disrupting the Islamic State's (ISIL or ISIS) activities via three mutually supportive elements. He said, "First, we are working to disrupt ISIL's revenue streams in order to deny it money in the first place. Second, we aim to limit what ISIL can do with the funds it collects by restricting its access to the international financial system. Finally, we will continue to impose sanctions on ISIL's senior leadership and financial facilitators to disrupt their ability to operate."

On October 17th, OFAC issued "Guidance Related to the Provision of Humanitarian Assistance by Not-For-Profit Non-Governmental Organizations" to further clarify the scope of transactions in which not-for-profit non-governmental organizations may engage to the extent such transactions may implicate designated individuals or take place in areas under the control of designated individuals or groups.

On October 10th, OFAC consolidated its sanctions files in order to make it easier to comply with sanctions regulations. The Consolidated Sanctions List includes all of its non-SDN sanctions lists (including the Non-SDN Palestinian Legislative Council List "NS-PLC List," the Part 561 List, the Non-SDN Iran Sanctions Act List "NS-ISA List," the Foreign Sanctions Evaders List "FSE List," and the Sectoral Sanctions Identifications List "SSI List"), as well as the SDN List. The tool may be found here.

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

3) U.S. Dissolves 1999 Agreement on Russian Hot-Rolled Steel Imports; Significant Anti-Dumping Duties to Take Effect in December

On October 17th, Deputy Assistant Secretary of Commerce Ronald K. Lorentzen notified Russia's Ministry of Economic Development that the 15-year-old "suspension agreement" on imports of Russian hot-rolled steel is no longer providing relief to U.S. producers and therefore will be formally terminated in 60 days. Once the agreement is terminated, U.S. importers of Russian hot-rolled steel will be obliged to deposit anti-dumping duties at rates ranging from 73 to 184 percent, depending on the Russian producer.

The agreement was originally negotiated to settle a trade dispute in which U.S. steel producers claimed that Russian producers were selling hot-rolled steel at unfairly low (dumped) prices. Domestic producers recently renewed a push for termination of the deal, arguing that it was not preventing Russian producers from continuing to undersell U.S.-made products. Commerce had

previously revisited the agreement in 2012, raising the reference prices for the Russian imports, but U.S. producers asserted that even with the price increase the agreement is no longer providing adequate relief.

Clients with antidumping questions should contact one of Crowell's trade remedies attorneys who specialize in the mechanics of suspension agreements and the management of antidumping duty orders.

For more information, contact: Dan Cannistra, Alex Schaefer, Jini Koh

4) AD/CVD Duties Sought on Welded Line Pipe from Korea and Turkey

On October 16th, American Cast Iron Pipe Company, along with seven other U.S. steel producers, filed a petition seeking antidumping (AD) and countervailing duties (CVD) on circular welded carbon and alloy steel pipe used for oil or gas pipelines, not more than 24 inches in diameter, from Korea and Turkey. The alleged dumping margins are 58.83 percent to 221.54 percent for the Korean producers and 16 percent for the Turkish producers. The petition also alleges countervailable subsidies, including export subsidies.

These allegations are not new: as early as 1982, U.S. industry sought import relief for these same products from Korea, and a petition on Turkish welded pipes was first filed in 1985.

The International Trade Commission (ITC) issued a [Federal Register Notice](#) announcing the investigation and will reach its preliminary determination on material injury or threat of material injury to the domestic industry by December 1st.

For more information, contact: Dan Cannistra, Alex Schaefer, Pierce Lee

5) Public Comments on FinCEN's Proposed Change to Customer Due Diligence Rule Available for Review

Although the comment window for the Financial Crimes Enforcement Network's (FinCEN) proposed rules to clarify and strengthen customer due diligence requirements for: (i) banks; (ii) brokers or dealers in securities; (iii) mutual funds; and (iv) futures commission merchants and introducing brokers in commodities has closed, public comments received are posted [here](#).

The proposed rules would contain explicit customer due diligence requirements and would include a new requirement to identify beneficial owners of legal entity customers, subject to certain exemptions.

For more information, contact: Cari Stinebower, Edward Goetz

CROWELL & MORING SPEAKS

Jonathan (Josh) Kallmer was a panelist for a discussion on "T-TIP: A Good Deal for Slovakia?" at the U.S. Embassy in Bratislava, Slovakia on October 8th.

On the same day, Josh presented on the topic, "How International Free Trade Agreements are negotiated," at two Slovakian Universities.

Finally, Josh presented at the "New Economic, Trade and Investment Partnerships between the EU, USA, and Canada – TTIP and CETA" forum at the Ministry of Economy of Slovakia on October 9th.

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

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