CLIENT ALERT

This Month in International Trade - September 2014

Oct.08.2014

THIS MONTH'S TOP TRADE DEVELOPMENTS

1) Court of Appeals Finds Corporate Officer Personally Liable for Customs Violations

On September 16, 2014, the U.S. Court of Appeal for the Federal Circuit, sitting *en banc* (*i.e.,* the full court instead of the typical three-judge panel), found a corporate officer personally liable for penalties related to violations of U.S. Customs and Border Protection (CBP) laws. This precedent-setting decision in *U.S. v. Trek Leather, Inc. and Harish Shadadpuri* establishes that any person engaging in negligent, grossly negligent, or fraudulent conduct in the course of importing goods into the United States may be subject to liability under the customs penalty statute regardless of the person's corporate status. Moreover, the holding establishes that such liability is not limited to the actual importer of record, but rather may attach more broadly to any party that causes goods to be "introduced" into the United States.

The case involved certain entries of men's suits imported by Trek Leather in 2004. At the time, Mr. Shadadpuri was Trek Leather's president and sole shareholder. Initially the shipments were invoiced and shipped to another company of which Mr. Shadadpuri was the president and 40% shareholder. While in transit, Mr. Shadadpuri caused the shipments to be transferred to Trek Leather. Mr. Shadadpuri, through Trek and his other companies, previously had provided fabric to the manufacturer of the suits either free of charge or at a reduced cost. As a result, the manufacturer's invoices included only its fees for the cutting and sewing of the suits. Mr. Shadadpuri furnished those invoices to the customs broker who used the information on the invoices to declare the entered value of the suits. But because the value of the fabric was not reflected in the invoices, the entered value was significantly understated. The record indicated that Mr. Shadadpuri was aware that the entered value should have included the value of the fabric because CBP had so informed him during an investigation of similar undervalued apparel importations in 2002.

CBP's penalty statute (Section 592) provides that "no person" may "enter, introduce, or attempt to enter or introduce" merchandise into the United States by means of "fraud, gross negligence, or negligence." Based on this language, Mr. Shadadpuri argued that absent fraud, penalty liability under this provision can only attach to the importer of record, which is necessarily the party "enter{ing}" the merchandise. After confirming that Mr. Shadadpuri is a "person" within the meaning of the statute, the court disagreed with his interpretation, pointing out that it fails to account for the provision's reference to the "introduction" of merchandise as distinct from its entry. The court ruled that Mr. Shadadpuri's provision of necessary entry documents and shipment arrangements constituted the "introduction" of merchandise into the U.S. within the meaning of Section 599(a)(1)(A), and that as a result he could be subject to penalties under that provision. In that regard, the court held that the term "introduce" should be interpreted broadly to include a wide variety of pre-importation activities that facilitate the ultimate entry of merchandise.

The court made it clear that it held Mr. Shadadpuri liable because he personally committed a violation of the statute, not because he was the owner or the officer of the importer of record. The court also explicitly declined to pierce the corporate veil, relying instead on the "longstanding agency law that an agent who actually commits a tort is generally liable for the tort along with the principal, even though the agent was acting for the principal." Hence, the court simply held that Shadadpuri's status as an officer or employee of the company did not relieve him of his personal liability.

Finally, the court held that its decision is not intended to and does not change the standard for a finding of liability for "aiding and abetting" the wrongful act by the importer of record, which is a separate violation under a related but separate provision (Section 592(a)(1)(B)). Historically, this was the only ground on which the court had found personal liability for a corporate officer, and because of the knowledge requirement associated with "aiding and abetting," such findings had been limited to cases involving fraudulent violations.

The decision in *Trek Leather* thus potentially expands the scope of personal liability under the customs law. The court's broad interpretation of the terms "person" and especially "introduce" in the context of Section 592(a)(1) poses a significant risk to corporate officers and employees who oversee their companies' compliance with customs regulations – the decision eliminates any doubt that such personnel can be personally liable for customs penalties based on any of a variety of pre-importation actions that violate the customs law, even where such actions do not rise above the level of simple negligence.

Clients with questions on this case and its implications for corporate officers and compliance programs should contact one of Crowell's customs attorneys – we specialize in assisting clients with the development of tailored procedures to avoid customs violations and penalty liability.

For more information, contact: John Brew, Alex Schaefer, Pierce Lee

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2) U.S. Court of International Trade Sides with Crowell on Aluminum Mop Handles Duties

On September 23rd, the U.S. Court of International Trade (CIT) remanded a U.S. Department of Commerce ruling that had found thirteen of Rubbermaid Commercial Product LLC's (RCP) imported mop handles as subject to the antidumping and countervailing duty orders on aluminum extrusions from China. Those orders exclude "finished products" such as finished doors and windows – RCP argued that its products are likewise finished products, but Commerce determined that because the handles are designed to work in conjunction with other equipment (*i.e.*, mop heads and similar attachments), they are by definition not finished products.

In rejecting Commerce's analysis, Judge Delissa A. Ridgwayheld that "If – as Commerce ruled here – Rubbermaid's products are not 'finished merchandise' but are instead 'mop parts,' why are doors and windows 'finished merchandise' and not mere 'house parts' or building parts'? Thus far, Commerce and the government have offered little more than *ipse dixit*" (meaning that Commerce had offered little evidence other than its own assertions).

Clients with antidumping and/or countervailing duty scope questions should contact one of Crowell's trade remedies attorneys – we specialize in ensuring the government adheres to the written and intended scope of such orders.

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

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3) Latest News on U.S. and EU Russia Sanctions

After a momentary hiatus to give the ceasefire a few days to work, September saw a comprehensive expansion of sanctions by the United States, European Union, Canada, Japan and other countries. The broadest measures were enacted by the United States and the EU and included: enacting sectoral sanctions to the Russian Energy and Military and Related Material sectors and to reduce the allowable credit period – including payment terms – from 90 to 30 days for most so-sanctioned entities; expansion of export prohibitions to restrict transactions in dual-use goods for use in Russian deep-water, Arctic, or shale oil exploration or production; a prohibition on the export of dual-use items to Russian military end-users or for military end uses; targeting participation in oil exploration within Russia; designating dozens of new persons under applicable blocking statutes; and adding a number of new entities to the Entity List to prohibit the export of all dual-use goods.

For a full listing and explanation of these sanctions, please see Crowell's recent Client Alert or contact*: Alan Gourley, Cari Stinebower, Salomé Cisnal de Ugarte, Chris Monahan, Dj Wolff*

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4) CBP Expands C-TPAT Program to Exporters

U.S. Customs and Border Protection (CBP) will begin accepting applications from exporters for participation in the Customs-Trade Partnership Against Terrorism (C-TPAT) program. To participate, entities must meet the program's definition of "exporter" which is defined as "person or company who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States." In addition, applicants must meet the following eligibility requirements:

- Be an active U.S. exporter out of the U.S.;
- Have a business office staffed in the U.S.;
- Be an active U.S. exporter with a documentable Employer Identification Number or Dun & Bradstreet number;
- Have a documented export security program and a designated officer or manager who will act as the C-TPAT program main point of contact;
- Commit to maintaining the C-TPAT supply chain security criteria as outlined in the C-TPAT exporter agreement;
- Create and provide CBP with a C-TPAT supply chain security profile that identifies how the exporter will maintain, and enhance internal policy to meet C-TPAT exporter security criteria; and
- Have an acceptable level of compliance for export reporting for the latest 12-month period and be in good standing with U.S. Government departments and agencies such as Commerce, State, Treasury, Defense, the Nuclear Regulatory Commission, and the Drug Enforcement Administration.

Participation in the program will provide exporters with several benefits, including reduced examination rates and times, priority processing, and heightened facilitation from foreign partners depending on the Mutual Recognition Arrangements in place.

For more information, contact: John Brew, Jini Koh

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5) USTR and Coalition for Green Trade Rallies Support on Capitol Hill for WTO Environmental Goods Agreement (EGA)

On September 17th, U.S. Trade Representative (USTR) Michael Froman joined the Coalition for Green Trade and key Congressional leaders to rally support for the World Trade Organization's (WTO) Environmental Goods Agreement (EGA). EGA negotiations between the U.S. and 13 other WTO Members began in July with the goal to eliminate tariffs on environmental goods. In 2013, the U.S. exported $106 billion of environmental goods, and total global trade in environmental goods is estimated at $1 trillion. The second round of EGA negotiations was held in Geneva in late September.

The EGA negotiations are based on a list of 54 environmental goods targeted by the Asia-Pacific Economic Cooperation (APEC) forum for tariff reductions by the end of 2015; however, the EGA talks will explore a wide range additional products for inclusion in the final agreement.

Clients with questions on how to best capitalize on this unique opportunity should not hesitate to contact Crowell.

For more information, contact: Dan Cannistra, Jonathan (Josh) Kallmer, Pierce Lee

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OTHER MAJOR TRADE TOPICS

1) Federal Circuit Broadens Factors for Antidumping Scope Determinations

The Court of Appeals for the Federal Circuit (Federal Circuit) recently held that a product that falls within the plain language of an antidumping duty order scope description still may be outside the scope of that order if other factors support a reasonable interpretation of exclusion. The case in question, A.L. Patterson Inc. v U.S., is therefore a significant precedent for companies whose products are pulled into trade remedies cases in ways that even the government may not intend.

In *A.L. Patterson, Inc. v U.S.*, the importer of engineering steel coil rods (coil rods), Patterson, argued that its product was outside the scope of the antidumping duty order on certain steel threaded rods (threaded rods) from China. In that regard, Patterson pointed to Commerce's earlier findings that the threaded rods subject to the order were primarily used in 'commercial construction to suspend electrical conduits, plumbing pipes, HVAC ductwork and fire protection sprinkler pipes,' whereas Patterson's coil rods were used in other applications

Commerce's position was that if the coil rods fall within the plain language of the order's scope, then no further analysis is required. The Federal Circuit disagreed, holding that the physical description is merely the first step, and that in addition to the plain language of the scope, Commerce must consider other statutory factors that could reasonably support exclusions. The court explicitly identified one such factor, namely the question of whether the product at issue is "directed to a distinct and different domestic industry" than the products otherwise covered by the scope of the order. After citing record evidence that (1) Patterson's coil rods are sold in different markets and for different end uses than conventional threaded rod products; and (2)

the original threaded rod investigation had never evaluated the condition of the U.S. industry producing coil rod, the Federal Circuit held that the coil rods were outside the scope of the antidumping order.

Evaluating whether the scope of an antidumping duty order covers a particular product can be a complex exercise, and the Federal Circuit's recent holding has added a new layer of complexity to that process. Crowell & Moring's trade remedies attorneys have years of expertise in parsing scope language and advocating for reasonable limitations on orders to avoid "scope creep."

For more information, contact: Alex Schaefer, Jini Koh

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2) False Claims Act Case Brought by Private Company Dismissed with Prejudice

On September 4th, Judge Mary McLaughlin of the U.S. District Court for the Eastern District of Pennsylvania dismissed with prejudice a suit bought under the False Claims Act (FCA) by Customs Fraud Investigations, LLC (CFI) against Victaulic Co., a Pennsylvania-based producer of iron and steel pipe fittings manufactured in the U.S., China, Poland, and Mexico. CFI claimed Vitaulic mismarked Chinese pipe fittings as U.S.-made in order to sell the items at higher prices.

CFI's claim was based on a comparison of import data (which showed that Victaulic had imported substantial volumes of pipe) with advertisements (which CFI viewed as demonstrating that most of the pipe Victaulic sold in the U.S. was of U.S. origin). Judge McLaughlin concluded that CFI provided "no basis for its wholly conclusory allegations that Victaulic falsified its customs entry documents or knowingly avoided paying any required marking duties. Assuming that such actions give to a claim under the FCA, the very limited factual allegations in the complaint do not state a claim."

If successful, the suit, brought by a private company acting as a "whistleblower" against another, completely unrelated private company on the basis of publicly available information, would have entitled the plaintiff to a portion of the funds owed to the government by the private company defendant, in particular the "marking duties" the defendant would have owed the government if it were found to have violated the marking statue.

For more information, contact: John Brew, Alex Schaefer, Brian Gatta

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3) Changes to CBP's Focused Assessment Program Effective as of October 1st – Updates Apply Only to Pre-Assessment Survey Phase

U.S. Customs and Border Protection (CBP) recently announced changes to the Pre-Assessment Survey (PAS) phase of its Focused Assessments. A detailed look at the changes may be found here.

Clients with questions on the PAS update should contact one of Crowell's experienced customs attorneys.

For more information, contact: John Brew, Jini Koh

4) CPSC Accepting Additional Comments Related to Mandatory Certificate of Compliance Filings at Entry

On September 18th, the Consumer Product Safety Commission (CPSC) held a public workshop on its proposed rule on Certificates of Compliance (certificates). The proposed rule, first published on May 13, 2013, requires certificates for regulated imported consumer products to be electronically filed with U.S. Customs & Border Protection (CBP) at the time of entry. The proposed changes to the certificates were summarized in a May 15th Crowell news alert.

The workshop focused on logistical, operational and administrative concerns raised by importers and other stakeholders with requiring the certificates at the time of entry for each and every shipment. Currently, certificates are required to "accompany" the shipment either physically with the goods *or* be electronically available and provided to the CPSC upon request. In consideration of the numerous comments received by the CPSC, several CPSC staff members introduced the idea of a pilot program with CBP and importers to better understand the technical and logistical challenges the proposed rule in its current state would impose. Staff members indicated that the parameters of the pilot program were currently in development.

As importers know, certificates and other government entry documents can only be uploaded as pdfs in the Automated Commercial Environment (ACE). As several stakeholders noted during the workshop, a single entry could contain several regulated products and each product could have several individual item numbers or multiple production batches, with each item number and/or production batch requiring a separate certificate. The resulting impact could be a single entry requiring hundreds of certificates so that even the simple task of uploading the pdfs of each certificate would create substantial delays and increase costs. Other issues raised by stakeholders included: requiring the certificates as a "condition" of entry under 19 U.S.C. §1509(a)(1)(A); requiring certificates to be submitted by the importer of record, regardless of the importer of record's relationship with the goods or sales transaction; and the proposed penalties associated with the certificates.

Interested parties can and should submit written comments through October 31, 2014, docket number CPSC-2013-0017.

Crowell's customs attorneys can be an invaluable resource in crafting client concerns into actionable comments.

For more information, contact: John Brew, Jini Koh

5) Arab Bank PLC Found Liable for Knowingly Supporting Terrorism; Plaintiffs Seek $1 Billion in Damages

Arab Bank PLC of Amman, Jordan was found liable for knowingly supporting terrorism in the first civil trial under the Anti-Terrorism Act. The New York jury found the lender provided financial services to Hamas, a group considered a terrorist organization by the United States, making Arab Bank liable for 24 attacks allegedly committed by Hamas in the early 2000s during what is known as the Second Intifada, a four-year uprising against Israel's occupation of the West Bank and Gaza.

Lawyers for Arab Bank are pushing for the Second Circuit to take up an appeal immediately, rather than waiting until after the final judgment because of flaws in the court proceedings. For example, the Second Circuit, on jurisdictional grounds, passed up on the opportunity to rule on a controversial order which allowed the jury to infer the bank supported terrorists.

Clients with questions on how this ruling, and subsequent decisions, may affect their business should contact one of Crowell's attorneys.

For more information, contact: Cari Stinebower, Edward Goetz

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6) To Label or Not to Label? Companies May Have No Choice

Most everyone knows that the First Amendment restricts the government's ability to limit commercial speech. Similarly, most everyone would probably think the First Amendment also restricts the government's ability to compel commercial speech. But are there times when the government may compel commercial speech? Indeed it can in some circumstances, and the D.C. Circuit recently expanded those circumstances in *American Meat Institute v. U.S. Department of Agriculture* (AMI). AMI involved a trade association's challenge to regulations requiring meat producers to include country-of-origin labels on their products. This decision is important to almost any company that is, or could be, subject to a regulatory mandate to disclose what the court calls "purely factual and uncontroversial information."

Rehearing en banc a case decided in the government's favor by a three-judge panel, the D.C. Circuit in AMI upheld the regulations, applying the test from the U.S. Supreme Court's decision in *Zauderer v. Office of Disciplinary Counsel*. Zauderer upheld, against a First Amendment challenge, a state's disciplinary action against an attorney whose advertisements had the potential to deceive consumers by failing to comply with state regulations mandating certain cost disclosures to prospective clients. Although the regulations concerning meat origins in AMI had nothing to do with countering consumer deception, the D.C. Circuit nonetheless applied Zauderer and thus extended its application beyond protection against consumer deception to the advancement of consumer edification.

So, after AMI, what remains of any First Amendment constraints on governmental regulations compelling companies to make public disclosures about a company's goods or services? On the one hand, the protections of the First Amendment seemed robust just two years ago when the D.C. Circuit struck down on First Amendment grounds certain U.S. Food and Drug Administration regulations that implemented an express statutory directive requiring cigarette packages to bear certain health warnings, including color graphics depicting the negative consequences of smoking. The court in *R.J. Reynolds Tobacco v. FDA* viewed Zauderer as not allowing the government to compel speech beyond what was required to protect against consumer deception, and thus held that the FDA's compelled graphic warnings violated the tobacco companies' First Amendment right to refrain from speaking.

On the other hand, we now have AMI, upholding compelled country-of-origin disclosures over the industry's First Amendment objections. To better understand the post-AMI state of the law, we need to look deeper into the AMI en banc decision.

AMI Expands Zauderer Beyond Protection Against Consumer Deception

Circuit Judge Stephen F. Williams, writing for the nine-judge majority, against two dissents, applied Zauderer's two-part test, which requires first that the government advance a "substantial interest," which in Zauderer concerned preventing consumer deception. In AMI, the government's interest was characterized as an "interest in country-of-origin labeling for food," which the court found substantial for the following reasons:

> the context and long history of country-of-origin disclosures to enable consumers to choose American-made products; the demonstrated consumer interest in extending country-of-origin labeling to food products; and the individual health concerns and market impacts that can arise in the event of a food-borne illness outbreak.

Although the American Meat Institute argued that the required disclosures did nothing more than satisfy consumers' "idle curiosity," the court rebutted this with the following facts:

1. country-of-origin disclosures have a historical pedigree: Congress has been requiring such disclosures in certain contexts for over a century;
2. the enabling statute's legislative history showed that Congress intended to enable consumers' informed choices; and
3. surveys showed that consumers wanted—and were willing to pay for—information regarding the origins of the food they buy.

Notably, the majority opinion held that "[t]o the extent that other cases in this circuit may be read as holding to the contrary and limiting Zauderer to cases in which the government points to an interest in correcting deception, we now overrule them," citing, among other cases, R.J. Reynolds Tobacco.

The second part of the Zauderer test requires that the compelled disclosure be "reasonably related" to the government's interest. The challenged regulation was reasonable, Judge Williams wrote, because it required disclosure only of "purely factual and uncontroversial information."

Judge Kavanaugh Concurs to Limit Reach of Majority's Analysis

Circuit Judge Brett M. Kavanaugh joined the majority, but also wrote separately to show that applying the Supreme Court's *Central Hudson Gas & Electric v. Public Service Commission* decision yielded the same result. The Central Hudson test requires the government to: "(i) identify a substantial governmental interest and (ii) demonstrate a sufficient fit between the law's requirements and that substantial interest."

Judge Kavanaugh disagreed that "providing consumers with information" alone justifies interference with commercial speech since that interest could be asserted to support nearly any disclosure mandate. Instead, the government's regulation here could be justified by an interest in promoting U.S. industries against foreign competition. Although the government did not advance this interest in litigation, Congress had done so in the course of passing the enabling statute.

Although Judge Kavanaugh saw the governmental interest he identified (i.e., protecting U.S. industry) as less sweeping than the interest identified by the majority (i.e., educating consumers — which he rejected as insufficient and overbroad), a smart would-be regulator could likely come up with a protectionist rationale for a broad range of disclosure mandates.

In other words, it is questionable whether Judge Kavanaugh's identified governmental interest would pose any greater First Amendment restriction on government than the one he identified as insufficient. Thus, companies and associations faced with a proposed rulemaking involving a disclosure mandate should consider whether to submit comments explaining how the mandate helps or hurts segments of U.S. industry (particularly vis-a-vis foreign competition), depending on whether they are supporting or opposing the proposed rule.

Judge Brown Dissents to Criticize Majority's Lax Review Standard

Two judges dissented. Circuit Judge Janice R. Brown, who wrote for the panel in R.J. Reynolds Tobacco, penned a stinging rebuke of the majority's employing of such a permissive standard "even more relaxed than rational basis review," for authorizing regulatory infringement of vital First Amendment rights. In her view, a "generous swath of protection the First Amendment once afforded to businesses against [compelled labeling aimed at serving any number of so-called public interests] has now been ceded to the government's allegedly good intentions."

Foreseeing almost limitless regulatory labeling mandates to come, she warned that under the majority's principle of constitutional adjudication, "there really is no limit to what government may compel." Circuit Judge Karen L. Henderson joined Judge Brown's dissent, but also wrote separately to scold the three-judge panel that first heard this case for failing to follow R.J. Reynolds Tobacco.

Where Does it End?

AMI's en banc multiplicity of perspectives on the meaning and application of the Supreme Court's Zauderer test for when commercial speech can be compelled by governmental regulators, as well as the important constitutional interests at stake, suggest that this case might not end with the en banc decision analyzed here. Even if the en banc court does not grant petitioners' pending petition for rehearing, the issue is important enough that the Supreme Court might yet want to have the last word in this case.

In the meantime, given that it overruled R.J. Reynolds Tobacco, AMI all but invites the FDA to revisit the gory graphical warnings struck down in that earlier case and opens the doors to government to impose additional regulatory disclosure mandates on the business community. If the case ends up standing for the broad proposition that the government may mandate disclosure of any facts reasonably related to consumer curiosity, it's hard to tell where the government's power might end. This was Judge Kavanaugh's fear, but whether his concurrence or the views of the dissenters succeed in limiting the potentially sweeping reach of Judge Williams's majority opinion remains to be seen.

For more information, contact: Thomas (Tim) Means, Daniel Wolff, Jesse Kirchner

This article was first published as expert analysis column by Law360 and may also be seen here. [Note: The hyperlink is to the pdf reprint on the firm's website.]

THIS MONTH IN TRADE

Agency Enforcement Actions

Office of Foreign Assets Control (OFAC)

- **Citigroup Inc. (Citigroup)**, New York, New York, agreed to remit $217,841 to settle potential civil liability for eight apparent violations of several sanctions regimes. Between April 2, 2009, and November 16, 2009, Citigroup Trade

Services Malaysia (Citi Penang) processed four export bill collection applications totaling $638,074.15 on behalf of Citibank N.A. (Citibank), Hong Kong that involved the shipment of goods to Iran, and in two of those instances the Islamic Republic of Iran Shipping Lines (IRISL), which OFAC designated on September 10, 2008. Separately, Citibank processed four funds transfers totaling $133,786.73 involving entities appearing on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). Citibank's interdiction software did not identify references to the sanctioned parties in the payment instructions, and the bank processed the payments straight through without manual intervention.

- **Zulutrade, Inc. (Zulutrade)**, a Delaware-incorporated entity registered with the Commodities Futures Trading Commission (CFTC), agreed to pay $200,000 to settle potential civil liability for apparent violations of the Iranian, Sudanese, and Syrian sanctions regimes. Zulutrade is an 'Introducing Broker and Commodity Trading Advisor' that operates an electronic trading platform which allows its customers to automatically place currency foreign exchange (FX) trades with broker-dealers through its platform. Beginning in 2009, Zulutrade maintained accounts for over 400 persons in Iran, Sudan, and Syria, and exported services to these customers by placing FX trades via its platform. Zulutrade also originated eight funds transfers totaling $10,264.36 destined for two individuals located in Iran. Zulutrade failed to screen or otherwise monitor its customer base for OFAC compliance purposes at the time of the apparent violations. This failure was the result of a lack of awareness regarding U.S. sanctions regulations. The CFTC has coordinated with OFAC to ensure commitments by Zulutrade to enhance its sanctions compliance capabilities are carried out.

Bureau of Industry and Security (BIS)

- On September 12th, BIS added five entities operating in the Russian Federation's defense sector to its Entity List. BIS also added five Russian energy companies to the Entity List to impose a licensing requirement when the exporter, re-exporter or transferor knows items will be used directly or indirectly in exploration for, or production from, deep-water, Arctic offshore, or shale projects in Russia. License applications for all 10 entities will be reviewed with a presumption of denial.
- On September 15th, BIS denied export privileges for 10 years to an individual convicted of violating the International Emergency Economic Powers Act on December 10th, 2013.
- On September 17th, BIS added 10 Russian entities to the Entity List for contributing to the situation in Ukraine. All 10 were also designated by OFAC.
- On September 17th, BIS announced that Area S.p.A. (Area), located in Italy, has agreed to a $100,000 civil penalty settling charges that it knowingly sold U.S.-origin network monitoring equipment to the Syrian Telecommunications Establishment (STE) without the required U.S. Government authorization.
- On September 17th, a Pennsylvania man pleaded guilty to conspiracy to illegally export laboratory equipment, including items used to detect chemical warfare agents, to Syria.
- On September 19th, BIS announced a Hong Kong businessman and two of his companies, Creative Electronics and United Sources Industrial Enterprises, were fined $8.4 million because they knowingly broke a bureau regulation ordering them to obtain permission from the Commerce Department before exporting goods from U.S. suppliers. The penalties can be reduced to $650,000 if the parties adhere to the agreements established with BIS.

- On September 25th, BIS denied export privileges for 10 years to an individual convicted of violating the Arms Export Control Act on September 11th, 2013. The individual is also listed on the Department of State's Debarred List.
- On September 25th, BIS announced that Kinetsu World Express, Inc. of East Rutherford, NJ has agreed to a $30,000 civil penalty settling a charge that it knowingly, as a freight forwarder, facilitated the export of three items subject to the EAR to a Specially Designated National (SDN) in China.
- On September 30th, BIS issued a Temporary Denial Order (TDO) suspending the export privileges of X-TREME Motors LLC, XTREME Outdoor Store, Tyson Preece, Corey Justin Preece and Toby Green for 180 days. X-TREME Motors and XTREME Outdoors, located in West Haven, Utah, have repeatedly engaged in conduct prohibited by the Export Administration Regulations (EAR) by exporting items controlled for crime control reasons without the required BIS licenses to various destinations including Russia and China.

False Claims Act (FCA)

- Smith & Nephew, Inc., a medical device maker, agreed to pay $8.3 million to settle an FCA lawsuit by the U.S. government and a relator in Tennessee federal court. The company was accused of passing off Malaysian-made products as made in the U.S. The relator is a former employee who alleged that he was fired in September 2008 when he refused to go along with the scheme. In the same month the employee was fired, the company disclosed that it had violated federal procurement law. Samuel Cox III, the fired employee, received $3 million for attorneys' fees, 28 percent of the settlement, and another $5,000 from the defendant.

For more information, contact: Michael Appel, Edward Goetz

KEY COMMERCE TRADE DISPUTE DECISIONS FOR SEPTEMBER

- On September 2nd, Commerce announced its preliminary determination in the antidumping duty (AD) investigation of imports of carbon and certain alloy steel wire rod from the People's Republic of China. The respondents in the case face duties of up to 110.25 percent. The preliminary rates for all exporters other than the three companies involved were not included because they either did not demonstrate their eligibility for a separate rate, or did not respond to Commerce's request for information. Commerce is presently scheduled to announce its final determination on or about November 13th.
- On September 9th, Commerce announced its final determinations in two investigations of chlorine compounds used in swimming pools and household cleaners imported from Japan and the People's Republic of China. In both cases, the initial determination was affirmed. Japanese companies will face duties of up to 60.65 percent, while Chinese companies will face duties of up to 10.81 percent. The U.S. International Trade Commission (ITC) is scheduled to make its final injury determinations on October 23rd.
- On September 9th, Commerce announced final determinations in two antidumping duty (AD) investigations and one countervailing duty (CVD) investigation concerning imports of rebar from Mexico and Turkey. Commerce affirmed its preliminary determination in both the AD case from Mexico and CVD case from Turkey, but reversed its prior decision

concerning the AD investigation of imports of rebar from Turkey. Mexico rebar will face duties of up to 66.7 percent. The U.S. International Trade Commission (ITC) is scheduled to make its final injury determination on or about October 23rd.

- On September 16th, Commerce announced the initiation of antidumping duty (AD) and countervailing duty (CVD) investigations of imports of boltless steel shelving units prepackaged for sale (boltless steel shelving) from the People's Republic of China (China). The U.S. International Trade Commission (ITC) is scheduled to make its preliminary injury determinations in October.
- On September 23rd, Commerce announced a preliminary determination that imports of 53-foot domestic dry containers from the People's Republic of China benefited from illegal subsidies. The containers will face duties of up to 10.46 percent. Commerce is scheduled to announce its final determination in this investigation on or about February 2, 2015, unless the statutory deadline is extended.
- On September 23rd and 25th, Commerce issued final determinations in several antidumping duty (AD) and countervailing dumping (CVD) investigations into imports of grain-oriented electrical steel (GOES) from the Czech Republic, China, Korea, and Russia. All decisions were in the affirmative with importers facing duties ranging from 3.68 percent all the way up to 159.21 percent. The U.S. International Trade Commission (ITC) is scheduled to make its final injury determinations on or before November 10th.

For more information, contact: Edward Goetz

CROWELL & MORING SPEAKS

Alan Gourley presented at SMi's Defence Exports Conference 2014, Amsterdam, Netherlands on October 2nd. His presentation, "U.S. Update on Export Controls," included topics such as Navigating Space & Satellite controls, Unmanned Aircraft Systems, and Coping with US-origin components.

Adelicia Cliffe, James (J. J.) Saulino, and David (Dj) Wolff were the expert panelists for Thompson Interactive's October 2nd webinar on "Export Controls, Economic and Trade Sanctions: The Challenges and Risks." Included in the webinar were discussions on export controls and economic sanctions, including recent developments in Export Control Reform, as well as changes in U.S. and EU sanctions on Iran and Russia.

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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

Edward Goetz
Manager, International Trade Services – Washington, D.C.
Phone: +1 202.508.8968

Email: egoetz@crowell.com

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

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

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