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CLIENT ALERT

This Month in International Trade - September 2015

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Negotiators Reach Agreement on the Trans-Pacific Partnership

Negotiators for the Trans-Pacific Partnership (TPP), a 12-country regional free trade agreement, announced the conclusion of negotiations on October 5 after five intense days of closing discussions in Atlanta.

After unsuccessfully seeking to resolve the remaining issues in Maui in August, the Ministerial meeting was able to forge consensus on each of the final items including market access for dairy products, the rule of origin for automobiles, and a data exclusivity rule for biological pharmaceuticals. Negotiators will now complete technical work on the agreement to prepare it for signature and ratification. In the United States, Trade Promotion Authority (TPA) procedures, by which the agreement will be ratified, require that the text of the agreement be made public 60 days before it is signed by the President.

The deal now faces local political scrutiny in each party to the agreement. In the United States, stakeholders have already begun to lay the groundwork for the forthcoming political debate, much of which will take place in the 2016 election year. While key Congressional leaders are still reviewing the agreement, stakeholders have already identified the following issues as potentially leading to significant political opposition in the U.S. Congress:

- **Biologics**: U.S. Trade Representative (USTR) Michael Froman has said that the deal will include at least five years of exclusivity for data used by developers to demonstrate the safety of biological drugs, far short of the twelve years of exclusivity sought by the U.S. biopharmaceutical industry and currently codified in U.S. law. Senate Finance Committee Chairman Orrin Hatch (R-Utah), who has previously pursued a 12-year rule, said that the TPP deal "appears to fall woefully short" of the "high-standard objectives" identified in TPA, which he co-authored, without referring to the biologics issue specifically.

- **Agriculture:** Market access for dairy products in Canada, sugar in the United States, and rice in Japan could create controversy, depending on the final terms of the agreement.

- **Tobacco:** According to USTR, the TPP will allow Parties to deny the benefits of investor-state dispute settlement to claims regarding tobacco control measures. Some Republican Senators from tobacco-growing states, most notably Thom Tillis (R-NC), have vowed to oppose the agreement on the basis of the tobacco carve-out.

- **Labor and Environment**: The labor and environmental provisions of the agreement could generate significant opposition, particularly from Democrats, if they are perceived as not being robust enough, particularly as they apply to Malaysia and Vietnam. Environmentalists and organized labor groups, who waged an outspoken campaign against TPA during Congressional debates over the summer, are expected to resume their campaign and likely to oppose any provisions contained in TPP.

- **Currency manipulation**: As of October 6, TPP negotiators are wrapping up talks on a side agreement addressing currency manipulation. However, the side agreement is not expected to contain binding obligations and is unlikely to appease Members of Congress that have been active on the currency issue in the past.

Crowell, and its trade policy affiliate C&M International, will continue to monitor the ongoing debates on TPP and alert clients to developments that may affect U.S. business interests as the text is released and public debates continue.

For more information, contact: Paul Davies, Dj Wolff, Evan Yu

SPECIAL FOCUS – EMPLOYEE LIABILITY

DOJ Announces New Focus on Prosecuting Individuals in Investigations Targeting Corporate Fraud and Misconduct

On September 9, the Department of Justice (DOJ) published a memorandum, now known as the "Yates memo" but formally titled, "Individual Accountability for Corporate Wrongdoing."

The memo notes that "In addition to recovering assets, civil enforcement actions serve to redress misconduct and deter future wrongdoing. Thus, civil attorneys investigating corporate wrongdoing should maintain a focus on the responsible individuals, recognizing that holding them to account is an important part of protecting the public ... in the long term."

In furtherance of this goal, DOJ formed a working group of senior DOJ attorneys with the mandate of addressing the challenges of identifying culpable individuals at all levels of corporate cases.

The group looked at how the Department approaches investigations and identified areas where it could amend policies and practices to most effectively pursue individuals. Six measures were identified; some new, others already best practices in use by many federal prosecutors. The memorandum states the measures are "steps that should be taken in any investigation of corporate misconduct."

The new measures are:

1. In order to be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct;
2. Criminal and civil corporate investigations should focus on individuals from the inception of the investigation;
3. Criminal and civil attorneys handling corporate investigations should be in routine contact with one another;
4. Absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation;
5. Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases; and
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

DOJ's Yates memo reiterates its focus on individual enforcement and, in conjunction with increased judicial oversight over Deferred Prosecution Agreements (DPA), its threat of zero cooperation credit represents another risk factor for companies conducting internal investigations and making self-reporting decisions in an increasingly aggressive enforcement environment.

For more information, contact: Cari Stinebower, Glen McGorty, Thomas Hanusik, Dj Wolff

CUSTOMS, IMPORTS, AND TRADE REMEDIES

Commerce Rules Mexican Sugar Dumped and Subsidized

On September 17, the U.S. Department of Commerce announced its affirmative final determinations in the antidumping (AD) and countervailing duty (CVD) investigations on imports of sugar from Mexico. Commerce found Mexican sugar imports into the U.S. were dumped at rates ranging from 40.48 to 42.14 percent and subsidized at rates ranging from 5.78 to 43.94 percent.

These investigations have continued, despite last December's agreements suspending the AD and CVD inquiries with Mexican sugar producers/exporters and the Government of Mexico, because two U.S. companies, AmCane Sugar LLC and Imperial Sugar Co., objected to the deals.

The next step is for the U.S. International Trade Commission (ITC) to make its final injury determinations. This is scheduled to be announced no later than Nov 2.

If the ITC determines the domestic U.S. sugar industry was not materially injured, or threatened with material injury, by Mexican sugar imports, the suspension agreements will have no force or effect and the underlying AD and CVD investigations will terminate, allowing imports of Mexican sugar to resume unconstrained. If the ITC finds that such injury does exist, the agreements will stay in place.

Until the ITC rulings, the agreements remain in effect, no AD or CVD orders will be issued and no cash deposits of AD or CVD duties will be required. Both the agreements and final determinations will be subject to judicial challenge by interested parties.

For more information, contact: Jini Koh, Benjamin Blase Caryl, Nicholas DeLong

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California Significantly Eases "Made in America" Labeling Requirements

Last week, California reversed course on its "Made in America" product labeling law by no longer requiring items to be entirely produced within the U.S. to carry the label. In doing so, the state aligns itself with the same labeling requirements as the U.S. Federal Trade Commission and the other 49 states.

Please see Crowell's Client Alert on this change to California law for more details.

For more information, contact: Jini Koh, Nick DeLong

ITC Continues Cold and Hot-Rolled Steel Investigations

On September 10, the U.S. International Trade Commission (ITC) determined there is a reasonable indication that the domestic cold-rolled steel industry is materially injured or threatened with material injury by reason of imports of certain cold-rolled steel

flat products from Brazil, China, India, Japan, Korea, Russia, and the United Kingdom that are allegedly dumped in the United States and subsidized by the governments of Brazil, China, India, Korea, and Russia.

As a result, the U.S. Department of Commerce (DOC) will continue to investigate these imports. The ITC, however, determined that the volume of cold-rolled steel imports from the Netherlands are negligible, resulting in the termination of the investigation of Dutch imports.

On September 24, the ITC determined that there is a reasonable indication that the domestic hot-rolled steel industry is materially injured by reason of imports of certain hot-rolled steel flat products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom that are allegedly dumped in the United States and subsidized by the governments of Brazil, Korea, and Turkey.

As a result, the DOC will continue to investigate these imports.

For more information, contact: Benjamin Blase Caryl

Commerce Finds Dumping of Imports of Silicomanganese from Australia

On September 18, the U.S. Department of Commerce (DOC) announced its affirmative preliminary determination in the antidumping duty (AD) investigation of imports of silicomanganese (also known as ferrosilicon manganese) from Australia.

Silicomanganese is used in the production of steel products and iron castings. There are already AD and/or countervailing duty (CVD) orders on U.S. imports of silicomanganese from Brazil, China, India, Kazakhstan, Ukraine, and Venezuela.

In this investigation, the sole mandatory respondent, Tasmanian Electro Metallurgical Company Pty Ltd. (TEMCO), received a preliminary margin of 11.93 percent. Because there were no other respondents, TEMCO's margin also serves as the preliminary dumping margin for all other producers/exporters in Australia.

As a result of the preliminary affirmative determination, DOC will instruct U.S. Customs and Border Protection to require cash deposits based on the above rates. DOC is currently scheduled to announce its final determination in early December 2015, and the U.S. International Trade Commission is scheduled to make its final injury determination in mid-January 2016.

For more information, contact: Benjamin Blase Caryl

New Trade Cases Filed on Welded Stainless Steel Pressure Pipe from India

On September 30, Bristol Metals, Felker Brothers, Outokumpo Stainless Pipe, and Macegaglia USA filed antidumping (AD) and countervailing duty (CVD) petitions on low-priced imports of welded stainless steel pressure pipe (WSPP) from India. There are already AD orders in place on U.S. imports of WSPP from China, Malaysia, Thailand, Vietnam, Korea and Taiwan.

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

For more information, contact: Benjamin Blase Caryl

SANCTIONS

Treasury and Commerce Further Relax U.S.-Cuba Trade Restrictions

On September 21, the Treasury Department's Office of Foreign Assets Control (OFAC) and the Commerce Department's Bureau of Industry and Security (BIS) published coordinated new amendments to the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR) to implement further relaxations of the U.S. embargo on Cuba.

These amendments supplemented the substantial relaxations announced in January and were designed to provide more flexibility and to clarify some of the practical implications with respect to certain transactions involving persons subject to U.S. jurisdiction, Cuba, and Cuban nationals. In particular, the amendments further liberalized travel provisions (though tourism remains prohibited), authorized certain persons to establish physical presences in Cuba, enabled additional transactions with Cuban nationals outside of Cuba, and addressed certain technical issues that had been caused by the January relaxations.

Please see Crowell's Client Alert for more detail on the changes.

Crowell & Moring Hosting Cuba Seminar in Houston, Texas on October 27

On Tuesday, October 27, Crowell & Moring is hosting a course in Houston, Texas on "**Cuba: Trade Liberalization and Prospects for Texas Industry**." The program is designed to provide in-house counsel and business executives in Texas with an update on Cuba's legal system; U.S. statutory, regulatory, and policy developments and their implications and challenges; current and prospective legislative developments on Capitol Hill; options and opportunities for bilateral cooperation and trade liberalization; commercial considerations as Texas businesses develop strategies for reengaging with Cuba; and near- and long-term opportunities and challenges for the Texas business community. For further program information, please contact Stephen Kimmerling at Crowell & Moring.

Panel 1: Update on the Law
Daniel Cannistra, Crowell & Moring LLP
Mike Gill, Crowell & Moring LLP
David (Dj) Wolff, Crowell & Moring LLP
Mariana Pendás, Crowell & Moring LLP

Panel 2: The Texas Business Perspective
Jorge Piñon, Director, Latin America and Caribbean Energy Program, The University of Texas at Austin
Dwight Roberts, President & CEO, US Rice Producers Association
Glen Jones, Associate Director of Organization, Texas Farm Bureau
C. Parr Rosson III, Professor & Head, Department of Agricultural Economics, Texas A&M University

For more information, contact: Cari Stinebower, Dan Cannistra, Dj Wolff, Mariana Pendas

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Appeal Arguments Heard in District Court over Rejection of Fokker Deferred Prosecution Agreement (DPA) for Sanctions Violations

On September 11, a panel of the D.C. Circuit heard oral arguments in the appeal by the United States (DOJ) and Fokker Services B.V. (Fokker) of a district court judge's rejection of a Deferred Prosecution Agreement (DPA) signed between Fokker and DOJ.

Last February, U.S. District Judge Richard J. Leon rejected a June 2014 DPA between the U.S. and Dutch aerospace provider Fokker because he found the terms of the DPA to be "grossly disproportionate" to Fokker's conduct. The Fokker DPA involved allegations that Fokker conspired to export aircraft parts, technologies, and services to Iran, Sudan, and Burma in violation of the International Emergency Economic Powers Act.

During oral argument, the D.C. Circuit panel appeared skeptical of the DOJ's arguments, questioning the jurisdictional basis for the appeal. The court further questioned the merits of the appeal and the scope of discretion that judges have in reviewing and approving DPAs.

Counsel for Fokker raised concerns that it had admitted certain facts in the DPA that could now be used as the basis for prosecution if the DPA were rejected. Moreover, given DOJ's recent change in policy focusing on increased liability for individuals, the rejection of the DPA could expose Fokker and its executives to additional prosecution.

It is unclear whether the panel will rule on the constitutional argument of the case or sidestep it by dismissing for lack of jurisdiction. A rejection of the government's argument or the latter outcome again raises the specter of tougher DPAs in the future or a decrease in voluntary self-disclosures and/or cooperation in such cases.

For more information, contact: Jeff Snyder, Cari Stinebower, Dj Wolff, Lindsay Denault, Edward Goetz

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EU Publishes New Russia Sanctions Guidance

On September 25, the EU published an updated FAQ to clarify the application of certain aspects of its sectoral sanctions regime against Russia.

The aim of the updated FAQ is to provide additional guidance on the application of certain provisions in Regulation (EU) No 833/2014 (EU sectoral sanctions), as amended, for the purpose of uniform implementation by national authorities and parties concerned. The EU FAQ parallels a similar FAQ previously published by the United States seeking to clarify aspects of the U.S. Russia-related sanctions.

The FAQs cover a range of topics including the trade finance exemption, financial assistance, restrictions on dual use goods and technology, restrictions in the oil sector, emergency funding, loans, and capital markets.

With respect to the trade finance exemption, the FAQ provides that the exemption should be interpreted as an exception to the general rule prohibiting the provision of loans and credit with a prohibited maturity to sectorally sanctioned persons. The FAQ clarifies a number of important limitations on the exception, including where the trade of goods does not have a "meaningful nexus" to the EU (e.g., is only being transshipped), or transactions involving prohibited operations beyond loans or credit (*e.g.*, involving export controlled goods, or transactions in transferable securities or money market instruments).

With respect to loans other than for trade finance, the FAQ provides additional guidance on loans that pre-date the sectoral sanctions, sales of accounts receivable, arrangements for succession of rollover debt, and deferred payment terms. With respect to capital markets, the FAQ provides guidance on derivatives, transferable securities, depository receipts, promissory notes, bills of lading, repurchase agreements and securities lending agreements, and financial research.

The EU FAQ also highlights certain differences with the U.S. The two countries have sought to coordinate their sanctions programs on Russia and have enacted similar provisions, though not identical provisions. Even where the provisions are similar, comparing the FAQs highlights differences in how the two countries interpret similar provisions that can lead to transatlantic divergences on matters ranging from deferred payment terms, to resales of accounts receivable, to successive debt rollover agreements.

For more information, contact: Cari Stinebower, Salomé Cisnal de Ugarte, Dj Wolff, Charles De Jager, Lorenzo Di Masi

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FINANCE, INVESTMENT, AND INTERNATIONAL TRADE

Supreme Court Takes on Bank Markazi Terrorism Case

On October 1, the Supreme Court granted Bank Markazi's petition for a writ of certiorari to hear its appeal of a Second Circuit decision in July 2014 that allowed families of the victims of the 1983 bombing of the Marine Corps barracks in Beirut to collect a $1.75 billion award against Iran's central bank.

The case centers on the scope of Congressional authority to dictate the disposition of assets frozen under U.S. sanctions. Specifically, in Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA), Congress dictated that certain blocked assets "shall be subject to execution" to "satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages" related to alleged involvement in terrorism or human rights violations. The ITRA provision specifically identified the assets at issue in the then-pending district court litigation against Iran that has ultimately resulted in this appeal.

The Supreme Court granted certiorari to determine whether ITRA's provision, which according to Markazi "effectively directs a particular result in a single pending case," violates the separation of powers.

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

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U.S. Seeks Industry Feedback on U.S.-China Bilateral Investment Treaty

The ongoing U.S.-China Bilateral Investment Treaty (BIT) negotiations provide a rare opportunity for companies to seek the removal of investment restrictions that prevent them from accessing the Chinese market. The window of opportunity to engage U.S. negotiators is open.

The US-China BIT negotiation offers the potential to secure additional market access under a "negative list" approach to negotiations. With a "negative list" the terms of the treaty apply to all sectors except those expressly listed as exclusions—an approach China has not accepted in its BITs with other countries.

BITs are international agreements that commit countries to treat each other's investors fairly and according to the rule of law, providing foreign investors with binding legal assurances they will not be discriminated against simply because they are foreign, that they will be accorded due process, and that they will be fully compensated if the government seizes their property, among other protections.

Although Presidents Obama and Xi reaffirmed the BIT was their "top economic priority" during their recent summit meeting in Washington, and both agreed to "commit to intensify the negotiations," the BIT talks are still considered to be far from the finish line. Briefing U.S. corporate officials in the run-up to the summit, senior Administration officials said that China still had a "long way to go" before the Administration judges there has been enough progress to conclude a treaty that will win Senate approval. How much China is willing to open up its market will depend on its leaders' commitment to economic reforms, transparency, and non-discrimination.

While the BIT talks are unlikely to conclude soon, currently the governments are working to narrow the "negative list" to as few exceptions as possible. The negotiations provide a window of opportunity for U.S. companies to bring their investment priorities and concerns about the Chinese market to the attention of the U.S. government.

Even though the U.S. will not be able to share the text of China's offer with the private sector, it will be highly valuable to U.S. negotiators to receive more information about what provisions various industries and individual companies want to see in the agreement.

For example, companies may want to communicate with the U.S. negotiators specific restrictions or provisions that are barriers to investment in China—perhaps it is an area where Chinese companies have access but foreign investors are barred or have limited access. If negotiators are able to ensure that those investment restrictions are not on the final negative list, U.S. companies would be able to invest in those areas the same way local companies can. The discussions, even if general, will help the U.S. in establishing priorities and understanding what provisions will be the most commercially meaningful for U.S. companies.

For more information, contact: Melissa Morris, Daniel Geisler, Tracy Huang, J.J. Saulino

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EU Proposes New Investment Court System

On September 16, the European Commission (Commission) presented its proposal for the establishment of a new Investment Court System to hear Investor-State Dispute Settlement (ISDS) cases arising under the Transatlantic Trade and Investment Partnership (TTIP) and, ultimately, other trade and investment agreements under a multilateral system. The proposal has been issued partly to address the serious concerns of certain EU citizens with the traditional ISDS system of *ad hoc* arbitration, which has come to be viewed by some as lacking transparency and being biased in favor of investors. TTIP negotiations on investment have effectively been stopped over these concerns.

The Investment Court System would consist of both a Tribunal of First Instance (Investment Tribunal) with fifteen publicly appointed judges and an Appeal Tribunal with six publicly appointed judges. The fifteen judges of the Investment Tribunal would be appointed jointly by the EU and the U.S., with five judges each being nationals of the EU, the U.S. and third countries. The six judges of the Appeal Tribunal would be appointed similarly, with two each being nationals of the EU, the U.S. and third countries.

To address transparency concerns, the judges of the Investment Tribunal and members of the Appeal Tribunal would be prohibited from accepting work as legal counsel on any investment disputes and would be subject to strict ethical rules. The stated aim of the Commission in designing the system in this way is to frame precisely the exercise of the adjudicators' functions so as to reduce drastically the risk of unforeseen interpretation of the investment protection rules, and to ensure correctness and predictability through the appellate mechanism.

The EU has competence for the protection of investments since 2009. However, EU Member States individually remain parties to approximately 1400 international investment agreements currently in force worldwide, most of which include ISDS provisions. To render more uniform the protection afforded to all EU Member States in the international investment context, the Commission hopes over time to harmonize the ISDS provisions of existing trade and investment agreements with those of agreements currently being negotiated. In the view of the Commission, TTIP thus provides a unique opportunity for reforming and improving the system. The ultimate aim of the Commission is to establish a multilateral system that would replace all the ISDS mechanisms in existing trade and investment agreements.

In terms of addressing the serious concerns of various stakeholders, the reaction to the Commission's proposal has been mixed. The proposal has been met with approval by the major parties in the European Parliament, but not the Left and Green parties who see it as simply ISDS under another name. The sense that the proposal is a mere rebranding effort is shared by European

NGOs. For its part, the business community believes the proposed system could lead to bias in favor of governments, which ultimately appoint the judges and members of both Tribunals.

The Office of the U.S. Trade Representative (USTR) has welcomed the proposal as a means of restarting TTIP negotiations on investment, but has not commented on the substance.

For more information, contact: Charles De Jager, Lorenzo Di Masi

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Venezuela Update: Currency Exchange Becomes Increasingly Difficult Under Failed SIMADI

As Venezuela's recession worsens, companies' ability to exchange *bolívares* into U.S. dollars is becoming increasingly difficult. Several experts have urged the immediate liberalization of capital flows, either through SIMADI (Marginal Currencies System or *Sistema Marginal de Divisas*) or another new mechanism.

The already complex exchange control system in Venezuela became more complicated this past February when the Government announced the creation of SIMADI. Although SIMADI aimed to offer a less-regulated alternative platform at an exchange rate based on supply and demand, the lack of a truly free market has resulted in its failure.

Seven months later, the progressive deterioration of Venezuela's exchange system continues, causing a substantial devaluation of the local currency (*bolívar*). Between February and September of 2015, the parallel market rate rose from 190 to around 800 *bolívares* per U.S. dollar. For further explanation of SIMADI and Venezuela's exchange structure, please see Crowell's February 2015 Client Alert.

Also, the failure of SIMADI has triggered rumors as to whether the Government may dollarize the economy. In May, local press announced that the Government and Ford Motors de Venezuela had reached an agreement allowing the sale of cars in U.S. dollars. However, this agreement—which was reportedly to be implemented by July—has yet to come into effect.

In view of the upcoming parliamentary elections on December 6, it appears unlikely that the Venezuelan Government will carry out any economic reforms for the remainder of 2015. Meanwhile, the absolute dependence of the currency trading market on the Government will continue to cause significant impact on companies with funds stranded in the country.

By failing to allow repatriation of monies, Venezuela continues to open itself to claims under bilateral investment treaties (BITs), which provide options for companies to recover their earnings and obtain compensation for losses suffered.

For more information, contact: Ian Laird, Eduardo Mathison, J.J. Saulino

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AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security (BIS)

- On September 21, BIS entered into a Settlement Agreement with Production Products, Inc. (PPI) of Maryland for engaging in conduct prohibited by the Export Administration Regulations (EAR). From on or about December 15, 2009, to on or about August 18, 2010, PPI shipped three duct fabrication machines, valued at $500,000, to China National Precision Machinery Import and Export Corp. (CNPM), a party listed as a Specially Designated National, without the required U.S. Government authorization. The company was assessed a civil penalty of $50,000, all of which will be suspended after a two-year probationary period.
- On September 15, BIS entered into a Settlement Agreement with Aiman Ammar (aka Ayman Ammar), Rashid Albuni, Engineering Construction & Contracting Co., Advanced Tech Solutions, and iT Wave FZCO for taking part in a conspiracy to export or re-export to Syria computer equipment and software designed for use in monitoring and controlling web traffic. The respondents were assessed a civil penalty of $7 million, $6,750,000 of which will be suspended after a two-year probationary period. Each respondent's export privileges were revoked for a period of between four and seven years.
- On September 14, BIS renewed the order temporarily denying export privileges to Flider Electronics (also known as Trident), LLC, Pavel Semenovich Flider, and Gennadiy Semenovich Flider. The original Temporary Denial Order (TDO) was issued on March 19, 2015 because of a pattern of exports from the U.S. to Russia involving false statements and other evasive actions or schemes designed to camouflage the actual destination, end users, and/or end users of the U.S.-origin items being exported.
- On September 2, BIS amended the Export Administration Regulations (EAR) by adding twenty-nine persons to the Entity List. The twenty-nine persons who were added have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the destinations of Crimea region of Ukraine, Cyprus, Finland, Romania, Russia, Switzerland, Ukraine, and the United Kingdom. BIS is taking this action to ensure the efficacy of existing sanctions on the Russian Federation (Russia) for violating international law and fueling the conflict in eastern Ukraine. This final rule also revises the reference to Crimea (occupied) on the Entity List to conform to other references in the EAR that refer to the Crimea region of Ukraine.

Securities and Exchange Commission (SEC)

- On September 28, the Securities and Exchange Commission (SEC) charged Tokyo-based conglomerate Hitachi, Ltd. with violating the Foreign Corrupt Practices Act (FCPA) when it inaccurately recorded improper payments to South Africa's ruling political party in connection with contracts to build two multi-billion dollar power plants
- Without admitting or denying the SEC's allegations, Hitachi agreed to a settlement that requires the company to pay a $19 million penalty, subject to court approval;
    - The SEC alleged Hitachi sold a 25-percent stake in a South African subsidiary to a company serving as a front for the African National Congress (ANC);
    - This arrangement gave the front company and the ANC the ability to share in the profits from any power station contracts that Hitachi secured;
    - Hitachi was ultimately awarded two contracts to build power stations in South Africa and paid the ANC's front company approximately $5 million in "dividends" based on profits derived from the contracts; and
    - Through a separate arrangement, Hitachi paid the front company an additional $1 million in "success fees" that were inaccurately booked as consulting fees without appropriate documentation.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

U.S. Customs & Border Protection (CBP)

- Effective October 19, CBP is implementing a Final Rule titled 'Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border.' The rule pertains to importations of merchandise bearing suspected counterfeit trademarks or trade names that are recorded with CBP. The Final Rule, with comments and CBP responses may be found here.
- The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on October 29, 2015 in Washington, D.C. The meeting will be held at the International Trade Commission building, in Courtroom B, 500 E Street SW, Washington, D.C.
    - For members of the public who plan to attend the meeting in person, please register either online at *https://apps.cbp.gov/te_reg/index.asp?w=47*; by email to *tradeevents@dhs.gov*; or by fax to (202) 325-4290 by 5:00 p.m. EDT by October 27, 2015. You must register prior to the meeting in order to attend the meeting in person;
    - For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=48* by 5:00 p.m. EDT by October 27, 2015; and
    - The following agenda topics will be discussed:
        - (1) The Trade Modernization Subcommittee will discuss the progress of the Center of Excellence and Expertise (CEE) Working Group which is addressing the topics of uniformity and levels of service across all of the CEEs. The subcommittee will also discuss the formation of two new working groups, the International Engagement & Trade Facilitation Working Group and the Future Role of Global Supply Chain Parties Working Group;
        - (2) The Global Supply Chain Subcommittee will discuss recommendations related to the use of electronic cargo security devices and their impact on CBP operations. The Pipeline Working Group will provide recommendations pertaining to clear definitions on in-transit pipeline movements and related topics. The subcommittee will also discuss Customs—Trade Partnership Against Terrorism (C-TPAT), land ports of entry (Canada and Mexico), ocean cargo, in-transit movements and the Air Cargo Advance Screening pilot (ACAS);
        - (3) The Exports Subcommittee Manifest Working Group will continue its review of the Federal Register Notices for the Air and Ocean Export Manifest Cargo Tests, and further discuss one of the elements developed from the COAC export mapping exercise, the Progressive Filing Model and Air Environment. The Exports Subcommittee will provide recommendations stemming from the reviews;
        - (4) The One U.S. Government Subcommittee will discuss progress of the Automated Commercial Environment (ACE) Single Window effort and the COAC recommendations. The subcommittee will provide input on trade readiness and partner government agencies' readiness for the upcoming November 1, 2015, ACE implementation of Single Window. There will also be an update from the North American Single Window Vision Working Group. In addition, the Consumer Product Safety Commission

(CPSC) and the Food and Drug Administration (FDA) will provide updates on previous COAC recommendations;
- (5) The Trade Enforcement and Revenue Collection Subcommittee will discuss the establishment of the 14th Term Intellectual Property Rights Working Group, the Trade Enforcement Vision Working Group, and progress made on the Antidumping and Countervailing Duty Working Group; and
- (6) The Trusted Trader Subcommittee will report on the Trusted Trader Pilot and discussions on the implementation of the second phase for testing U.S. Customs and Border Protection (CBP) and partner government agency trade benefits.

Department of State

- The Defense Trade Advisory Group (DTAG) will meet in open session from 1 p.m. until 5 p.m. on Thursday, October 29, 2015 at 1777 F Street, NW, Washington, D.C. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to discuss current defense trade issues and topics for further study.
- Members of the public may attend this open session and will be permitted to participate in the discussion.
- The following agenda topics will be discussed:
    - (1) Trade Compliance Process. Review of the current Voluntary Disclosure (VD) process and recommendations for possible improvements or changes (including analysis of how to address "administrative" VDs as distinguished from other VDs) while ensuring that foreign policy and national security interests are met;
    - (2) Cyber Products. Review of "cyber products" and recommendations for which products, if any, should be included on the U.S. Munitions List, and potential impact on cyber products resulting from such export controls;
    - (3) DTAG Structure and Operations. Examination of whether DTAG could function similar to the Commerce Department's Technical Advisory Committees (TACs), how DTAG could interface with such TACs, and whether State, Commerce and the Department of Defense should establish an interagency defense trade advisory group; and
    - (4) Export Control Reform (ECR) status. Report on U.S. industry views regarding licensing flexibilities and efficiencies (including availability of license exception, Strategic Trade Authorization), unintended consequences, and areas of potential improvements, resulting from the transfer of certain items from the jurisdiction of the International Traffic in Arms Regulations (U.S. Munitions List) to the jurisdiction of the Export Administration Regulations (Commerce Control List).

Office of the United States Trade Representative (USTR)

- In late September, the USTR announced the results of the Obama Administration's Limited Product Review under the Generalized System of Preferences (GSP) program. GSP is a trade preference program under which the United States provides duty-free treatment to many imports from developing countries.
- Full details may be found here. Highlights include:

- The addition of five upland cotton fiber products to eligibility for duty-free treatment under GSP when imported from least developed country (LDC) beneficiaries
- Reinstatement (redesignation) to GSP eligibility of three products from Ukraine and one from Indonesia that had previously been excluded from the program based on competitive need limitations;
- The granting of competitive need limitation (CNL) waivers, ensuring continued GSP duty-free benefits, for 100 products from 13 countries, including both petitioned and *de minimis* waivers; and
- The revocation of CNL waivers for three products from certain countries that had exceeded certain statutory limits related to competitiveness.

U.S. International Trade Commission (USITC)

- The U.S. International Trade Commission (ITC) has launched a new interactive Harmonized Tariff Schedule (HTS) search tool. The tool provides a more modern and accessible interface to search for tariff information, expanded search results inclusive of all HTS chapters, and the capability to download the HTS data in multiple formats.
- The new tool is designed to be intuitive; it includes user tips, a user guide, and online help to assist users with the tool's capabilities, as well as an "Ask a Tariff Question" feature, through which users can send email to ITC staff asking either technical or substantive questions.
- The new system can be accessed at: http://hts.usitc.gov/

For more information, contact: Edward Goetz, Nicholas DeLong

CROWELL & MORING SPEAKS

John Brew spoke at the World Customs Organization's 10th Annual PICARD Conference in Baku, Azerbaijan on September 9.

Crowell & Moring is an official sponsor of WorldECR's Washington, D.C. and London Export Controls and Sanctions Forums this fall. Alan Gourley and DJ Wolff were presenters at the Washington, D.C. forum in September and will also speak at the London forum, which is being held on October 14-15. For further details, please contact Alan Gourley or Dj Wolff.

Alex Schaefer was a panelist on a September 29 webinar providing guidance to trade counsel on minimizing the risks associated with importing goods subject to antidumping (AD) and countervailing duty orders (CVD). The panel discussed new law and its impact for importers, how the courts have recently treated AD and CVD cases, and shared best practices for import compliance.

Alex Schaefer and Chris Monahan were panelists on an October 6 webinar sponsored by the American Bar Association titled "International Trade Compliance for the Business Lawyer." The program included an overview of the statutory and regulatory landscape; guidance on managing and mitigating trade compliance issues in transactions; perspectives on recent changes to U.S. sanctions related to Ukraine, Russia, and Cuba; and industry perspective from in-house counsel.

Frances Hadfield will be a panelist on an October 20 webinar sponsored by the United States Fashion Industry Association titled "Legal & Customs Landscape for Fashion & Tech." The event begins at2:00 PM ET/11:00 AM PT. You mayclick here to register.

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

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