CLIENT ALERT

The Month in International Trade – September 2021

Oct.08.2021

In this issue:

This news bulletin is provided by the International Trade Group of Crowell & Moring. If you have questions or need assistance on trade law matters, please contact Jeff Snyder *or any member of the* International Trade Group.

Top Trade Developments

Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures

Please click here anytime for the latest actions, covered products rate increases, and effective dates.

For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Ru Xiao-Graham, Sam Boone, Clayton Kaier

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Latest on Section 301 Product Exclusions

Please click here anytime for the latest actions regarding Section 301 Product Exclusions.

For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Ru Xiao-Graham, Sam Boone, Clayton Kaier

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Ambassador Tai Outlines New Approach to U.S.-China Trade Relationship: USTR to Restart Tariff Exclusion Process for Section 301 Duties

On October 4, 2021, United States Trade Representative ("USTR") Katherine Tai delivered a speech at the Center for Strategic and International Studies (CSIS) highlighting the Biden Administration's new strategy for navigating U.S.-China trade relations. Ambassador Tai focused her remarks on President Biden's vision for a worker-centered trade policy in the U.S.-China trade dynamic, however the policy details from the speech signal a continuance of key elements of the status-quo left behind by the Trump Administration – specifically the use of tariffs on a wide range of U.S. imports from China.

USTR will continue to seek enforcement of the Trump Administration's Phase One deal from January 2020 and shows little indication that the Section 301 tariffs targeting the vast-majority of Chinese imports will be removed. Despite maintaining the tariffs of up to 25 percent on approximately $360 million in US imports, Ambassador Tai announced that USTR will restart a targeted tariff exclusion process for Section 301 duties. While encouraging, this suggests only limited relief for some portion of U.S. businesses and consumers who have been hit with the existing tariffs.

In her speech, Ambassador Tai took aim at China's economic system by saying that, "Beijing has doubled down on its state-centered economic system" and it "is increasingly clear that China's plans do not include meaningful reforms to address the concerns that have been shared by the United States and many other countries." She directly tied China's economic growth to the "expense of workers and economic opportunity here in the U.S." and highlighted the injury to the U.S. steel injury which has seen employment drop "40 percent since 2000." Other industries highlighted in the remarks included the extensive Chinese-state subsidies into photovoltaic solar cells and semiconductors as well as the unequal market access for U.S. agriculture.

After detailing the woes stemming from U.S.-China trade relations, Ambassador Tai shared that a priority for the Biden Administration is for the U.S. is to invest in American workers, infrastructure, R&D, clean energy technology and incentives for companies to Buy American, among others. The USTR promised to discuss China's performance under the Phase One Agreement and directly engage with China on its industrial policies with an objective not to inflame current trade tensions. Furthermore, the U.S. will seek to work more closely with allies to construct a fair international trade system. In contrast to using language such as "decoupling", the single phrase from Ambassador Tai that best encapsulated the new U.S. strategy is "durable coexistence."

A notable omission from today's presentation was any mention of a possible new Section 301 investigation targeting Chinese industrial subsidies which had been reported by multiple news outlets in September. A new investigation with additional tariffs would be certain to add fuel to the tariff-war that began in 2018. For the time being, the Biden Administration will be sticking with the status quo of tariffs. Former USTR Robert Lighthizer has criticized the idea to restart the exclusion process as he claims companies have had more than two years to reconfigure their supply chains away from China. Proponents of the exclusions point out the burden of the tariffs on US importers and consumers, a point Ambassador Tai seemed to acknowledge in the Q&A that followed her speech

Although the headline from the speech from a business perspective is the establishment of a new tariff exclusion process, Ambassador Tai offered few details about either the scope or timing. With the exception of medical products needed to fight the pandemic, the last of the Section 301 exclusions from the first exclusion-process expired in December 2020. It remains to be seen if the exclusion process will be open to all industries and how far retroactive duty relief will stretch back in time. As the multiple rounds of exclusions continued during the Trump administration, USTR became more and more selective on which products were granted exemptions. Crowell & Moring calculates that for List 1 USTR granted 33.8% of all exclusion requests while for the larger List 3 the number dipped to 4.9% granted. In the rebooted version of the Biden Administration's exclusion process, USTR could possibly take a more lenient approach. Ambassador Tai stated that "we will keep open the potential for additional exclusion processes, as warranted."

To view a video of the speech and the Q&A, click here for a link to the CSIS event.

Please do not hesitate to contact Crowell & Moring if you have any questions.

For more information: Robert Holleyman, John Brew, Sam Boone, Clayton Kaier

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China Releases "Fact Sheet" on U.S.' Interference in Hong Kong

On September 24, 2021, the Chinese Ministry of Foreign Affairs ("MFA") released the Fact Sheet: U.S. Interference in Hong Kong Affairs and Support for Anti-China, Destabilizing Forces ("Fact Sheet") which sets out a comprehensive chronological list of events detailing the United States' interference in Hong Kong. Click here to read the official translation of the full Fact Sheet.

Click here to continue reading the full version of this alert.

For more information: Evan Chuck, Zhiwei Chen

China Formally Requests to Join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

On September 16, 2021, China announced that its Minister of Commerce, Wang Wentao, submitted a formal application to New Zealand's Minister of Trade and Export Growth to join CPTPP. This is accompanied by recent efforts by Chinese embassy officials to lobby the Australian parliament for assistance in joining the trading pact.

The pact, consisting of Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam was signed in 2018 following President Trump's withdrawal. The deal is seen as a strategic hedge against China's influence in the region and competing trade pact, the Regional Comprehensive Economic Partnership Agreement (RCEP), consisting of Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam.

The development has drawn reactions across the U.S. government and from allies:

The White House

When asked whether the Administration would consider rejoining CPTPP, White House Press Secretary Jen Psaki said that it would be considered alongside “a range” of options to strengthen economic ties in the region. Psaki went on to say that President Biden has “been clear that we have to join with the 40 percent of the world that we had with us for the deal and make sure environmentalists and labor are at the table, so obviously there’d be a lot of steps to be taken in order for that to be a viable option.”

Congress

Senate Finance trade subcommittee Chairman Tom Carper (D-DE) and ranking member John Cornyn (R-TX) said, “For quite some time, we have been warning about China’s subtle yet deliberate moves to join the CPTPP – the very trade pact crafted to counter China’s trade influence that the United States mistakenly walked away from” and that, “We’ve long believed that United States trade leadership is critical for our country’s economy and national security – and it’s clear that China is not waiting to assert itself in the region. The U.S. cannot afford to continue waiting in the hallway – we must get our seat back at the table to re-engage our Asia Pacific allies in trade” in a joint statement.

Taiwan

On September 22, 2021, Taiwan announced their formal application to New Zealand’s Minister of Trade and Export Growth to join CPTPP. The announcement came less than a week after China’s application.

Australia

On China, Australia’s Trade Minister, Dan Tehan said “CPTPP parties would also want to be confident that an -accession candidate would fully implement its commitments under the agreement in good faith.” Tehan went on to say that it was unlikely China could join until members saw a “track -record of compliance” on previous commitments.

For more information: Clayton Kaier, Edward Goetz

OFAC Issues Updated Guidance on Ransomware Attacks and Imposes First Sanctions Designation on a Virtual Currency Exchange

On September 21, 2021, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued an updated advisory on potential sanctions risks for companies that facilitate ransomware payments in response to cyberattacks, guidance on preventative measures companies can implement to mitigate such risks, and criteria that OFAC will consider as mitigating factors in any potential enforcement action. OFAC also announced that it has added SUEX OTC, S.R.O. (“SUEX”), a Russian virtual currency exchange, to its Specially Designated Nationals and Blocked Persons List (the “SDN List”), as a result of its role in facilitating ransomware payments. This represents OFAC’s first-ever designation of a virtual currency exchange.

Click here to continue reading the full version of this alert.

For more information: Caroline Brown, Laura Foggan, Carlton Greene, Jeff Poston, Dj Wolff, Evan Wolff, Maida Oringher Lerner, Anand Sithian, Matthew Welling

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OFAC Issues License for USG and USG Contractors for Humanitarian Assistance in Afghanistan

On August 25, 2021, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a License (the License) pursuant to OFAC's Global Terrorism Sanctions Regulations (GTSR or SDGT Sanctions) and Foreign Terrorism Organizations Sanctions Regulations (FTOSR) following a request from the Department of State. Under Section 1 of the License, the U.S. Government, its employees, grantees, contractors, and others acting on the U.S. Government's behalf (collectively the Licensees) are authorized to "engage in all transactions necessary and ordinarily incident to the provision of humanitarian assistance in Afghanistan," which would otherwise be prohibited under GTSR or FTOSR. As such, the identified licensees may engage in humanitarian-related transactions involving the Taliban, provided such transactions are not otherwise prohibited by any other sanctions law or regulation. Further, the License permits the transfer of funds for authorized transactions through the U.S. financial system, and does not require blocking or rejecting such transactions. The License contains other customary restrictions, cautions, and record-keeping requirements required by OFAC. For example, if a Licensee is making use of the License to cover activities of persons acting on the U.S. Government's behalf, that person must receive a copy of the License.

The license is set to expire on March 1, 2022, though it may be revoked or modified at any time prior to its expiration. The Department of State may request additional licenses as well by submitting a request to the Department of the Treasury no later than 30 days prior to the desired effective start date.

For more information regarding the License and sanctions-implications in Afghanistan, contact our team and see previous posts below.

OFAC Revokes Belarus General License (General License 2G or GL 2G) | International Trade Law (cmtradelaw.com)

OFAC Sanctions Network Attempting to Evade U.S. Sanctions on Venezuela's Oil Sector | International Trade Law (cmtradelaw.com)

For more information: Jeff Snyder, Frances Hadfield, Anand Sithian, Nichole Succar, Martin Yerovi

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Three Former U.S. Intelligence Community and Military Personnel to Pay $1.68 Million to Resolve Criminal Charges Regarding Hacking-Related Services to a Foreign Government

On September 14, 2021, the U.S. Department of Justice announced that three former employees of the U.S. Intelligence Community (USIC) and the U.S. military agreed to enter a deferred prosecution agreement (DPA) for conspiracy to violate the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) in violation of Title 18, United States

Code, Section 371. The Agreement restricts the three individuals' future activities and employment as well as requires them to altogether pay approximately $1.68 million in penalties.

Court documents state that between 2016 and 2019, the three individuals worked as senior managers at a U.A.E. company that supported and carried out computer network exploitation (CNE) operations for the benefit of the U.A.E. government. Despite warnings that their work constituted a "defense service," pursuant to the ITAR, and therefore required a license from the State Department's Directorate of Defense Trade Controls (DDTC), the Defendants continued to provide their services without a license. Most notably, their services assisted in the development of sophisticated "zero-click" computer hacks and intelligence gathering systems – which allow a person to compromise a device without any action from the target. These systems allowed employees of the U.A.E. company to "illegally obtain and use access credentials for online accounts issued by U.S. companies, and to obtain unauthorized access to computers, like mobile phones, around the world, including in the United States."

Prior to joining the U.A.E. company and after their departure from government employment, the three Defendants worked for a U.S. company that provided cyber services to a U.A.E. government agency in compliance with the ITAR pursuant to a DDTC-issued Technical Assistance Agreement (TAA). When the three individuals transitioned to the U.A.E. company to provide the same services, the U.S. company warned the Defendants that their services constituted "defense services" under the ITAR and that they could not provide such services to the U.A.E. company without a separate TAA.

Under the DPA, the Defendant will pay $750,000, $600,000, and $335,000 respectively, over a three-year term. The Defendants also agreed to the immediate relinquishment of any foreign or U.S. security clearance as well as certain employment restrictions.

The Press Release is available here.

For more information on actions related to ITAR and cybersecurity, contact our team and see previous posts below.

Five Charged in Scheme to Export Thermal Imaging Scopes and Night Vision Goggles to Russia, in Violation of the Arms Export Control Act | International Trade Law (cmtradelaw.com)

UPDATE: Export Control Agencies Coordinated Response Target Russia for Prohibited Chemical Weapon Activities | International Trade Law (cmtradelaw.com)

For more information: Jeff Snyder, Martin Yerovi

Customs Rulings of The Week

- **Classification of Snake Decoration**
- **Country of Origin of Bypass Lopper and a Pruner**
- **Country of Origin of Instant-Read Food Thermometer**
- **Classification of Wine Preservation Systems**
- **Classification of Pre-Fried Frozen Cheese Stick Products**

For more information, contact: Frances Hadfield, Martín Yerovi

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Crowell & Moring Podcasts

Global Trade Talks – U.S.-China Trade Relations with Ker Gibbs, President at The American Chamber of Commerce in Shanghai (AmCham Shanghai)

Global Trade Talks is a podcast that shares brief perspectives on key global issues on international trade, current events, business, law and public policy as they impact our lives. In this podcast, hosts Nicole Simonian and Ambassador Robert Holleyman talk to Ker Gibbs, current President at AmCham Shanghai about the current business and trade environment in China and the issues facing American companies operating in China.

Listen: Crowell.com | PodBean | SoundCloud | Apple Podcasts

For more information, contact: Robert Holleyman, Nicole Simonian

Crowell & Moring Speaks

Caroline Brown was a participant at the 3rd Virtual Conference on U.S.-China Trade Controls on September 20, 2021. The official event website may be found here.

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

Jeffrey L. Snyder
Partner – Washington, D.C.
Phone: +1 202.624.2790
Email: jsnyder@crowell.com

Frances P. Hadfield
Counsel – New York
Phone: +1 212.803.4040
Email: fhadfield@crowell.com

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