

# CLIENT ALERT

## This Month in International Trade - April 2014

May.06.2014

### THIS MONTH'S TOP TRADE DEVELOPMENTS

#### 1) New Russia-Ukraine Sanctions: The G-7 Responds to Perceived Violations of the Geneva Accords

On Monday, April 28th, the United States and Canada acted to adopt new sanctions against certain Russian individuals and entities (including several financial companies, transport and freight companies, and an investment company) and the United States expanded its export restrictions and the revocation of certain existing licenses for exports to Russia. On Tuesday, April 29th, the European Union sanctioned 15 individuals and Japan imposed visa bans on 23 individuals. These actions serve to implement the G-7's (a group of seven industrialized nations including the United States, the United Kingdom, France, Germany, Italy, Canada, and Japan) commitment on Sunday, April 27 stating that Russia had failed to live up to its commitments under the Geneva Accord by continuing to "destabilize Eastern Ukraine" and promising new sanctions in response. Below is a brief, non-exhaustive, summary of the new actions taken by these countries. Please contact the authors for additional guidance regarding these rapidly changing developments.

#### United States

**Sanctions** – Fulfilling the commitment President Obama made in a public address in the Philippines, on Monday morning, the U.S. Treasury Department issued new list-based sanctions targeting seven individuals and 17 entities under [Executive Order 13661](#).

Included in these new designations is Igor Sechin, the President and Chairman of the Board at Rosneft, one of Russia's largest oil companies. Additionally, the sanctions include a [large list](#) of newly designated entities, all with links to previously designated persons including Gennady Timchenko, Bank Rossiya, and Arkady and Boris Rotenberg. All assets of the following persons are blocked and U.S. persons are prohibited from engaging in virtually all transactions with these persons:

#### Individuals

- BELAVENCEV, Oleg Evgenyevich – Russian Presidential Envoy to the Crimean District; Member of the Russian Security Council.
- CHEMEZOV, Sergei – Director General of the State Corporation for Promoting Development, Manufacturing and Export of Russian Technologies (Rostec). Rostec is not yet sanctioned. Also serves on the Board of Rosneft.
- KOZAK, Dmitry – Deputy Prime Minister of the Russian Federation.
- MUROV, Evgeniy Alekseyevich – Director of the Federal Protective Service of the Russian Federation; Army General.
- PUSHKOV, Aleksei Konstantinovich – Chairman of State Duma Committee on International Affairs.
- SECHIN, Igor – President and Chairman of the Board of Rosneft. Rosneft is not yet sanctioned.

- VOLODIN, Vyacheslav – First Deputy Chief of Staff of the Presidential Executive Office.

## Entities

- AQUANIKA – A Russian water and drink manufacturer.
- AVIA GROUP LLC – Involved in ground infrastructure for the Business Aviation Center at Sheremetyevo International Airport in Moscow.
- AVIA GROUP NORD LLC – Provides management services for corporate aviation at Pulkovo International Airport in Saint Petersburg, Russia.
- CJSC ZEST – Designated for being owned or controlled by Bank Rossiya.
- INVESTCAPITALBANK – Designated for being owned or controlled by Arkady and Boris Rotenberg.
- JSB SOBINBANK – Designated for being owned or controlled by Bank Rossiya.
- SAKHATRANS LLC – A transportation company engaged in the construction of the bulk terminal for coal and iron ore exports in Muchka Bay near Vanino in Russia's far east.
- SMP BANK – Owned or controlled by Arkady and Boris Rotenberg.
- STROYGAZMONTAZH – A gas pipeline construction company owned or controlled by Arkady Rotenberg. Rotenberg created SGM Group in 2008 after acquiring multiple Gazprom contractors.
- STROYTRANSGAZ GROUP – A Russian construction group, comprising a number of business entities that specialize in different aspects of the construction industry.
- STROYTRANSGAZ HOLDING – A holding company for construction assets.
- STROYTRANSGAZ LLC – An infrastructure construction company.
- STROYTRANSGAZ OJSC – An electricity construction company.
- STROYTRANSGAZ-M LLC – An industrial construction company focused on oil, gas, petrochemical, and other civil engineering projects.
- THE LIMITED LIABILITY COMPANY INVESTMENT COMPANY ABROS – Designated for being owned or controlled by Bank Rossiya.
- TRANSOIL – A Russian based rail freight operator specializing in the transportation of oil and oil products.
- VOLGA GROUP – A Luxembourg based investment vehicle which manages assets on behalf of Mr. Timchenko.

Under OFAC's guidance, any entities that are 50 percent or more owned by any of the entities or individuals designated above are themselves sanctioned by operation of law. Any entities that are otherwise controlled by these entities or individuals are eligible for future designation as sanctioned persons; companies should exercise a high degree of caution when considering transacting with them.

**Export Control** – Additionally, the United States announced new restrictions on export control licensing. Previously, the United States had suspended pending applications for licenses of products controlled under both the Export Administration Regulations (EAR) and the International Traffic in Arms Regulation (ITAR). Today, both the [State Department](#) and the [Commerce Department](#) went further and announced both agencies will: (1) deny all pending applications for the export or re-export of any "high technology" defense articles or services (State) or items subject to the EAR (Commerce) that "contribute to Russia's military

capability" and (2) take action to revoke any existing license that meets those conditions. All other pending and existing licenses will be evaluated on a case-by-case basis to determine "their contribution to Russia's military capabilities."

Additionally, the Commerce Department buttressed the new sanctions by adding 13 of the sanctioned entities to the Entity List: Stroytransgaz Holding; Aquanika; Avia Group LLC; Avia Group Nord LLC; CJSC Zest; Sakhatrans LLC; Stroygazmontazh; Stroytransgaz Group; Stroytransgaz LLC; Stroytransgaz-M LLC; Stroytransgaz OJSC; and Transoil. The net effect – because U.S. persons were already restricted from transacting with these entities under Treasury's sanctions – of these additions is to impose re-export restrictions on non-U.S. persons for items subject to the EAR.

## European Union

The EU agreed to sanction 15 individuals on Monday, and announced the following names on Tuesday, April 29th.

- BOLOTOV, Valeriy – Russian Representative to Crimean Federal District
- GENNADEVICH, Tsyplakov Sergey – Leader of "Army of the South-East"
- GERASIMOV, Valery Vasilevich – Chief of the General Staff of the Russian Armed Forces
- KOVATIDI, Olga Fedorovna – Member of the Russian Federation Council
- KOZAK, Dmitry Nikolayevich – Deputy Prime Minister (Already sanctioned by U.S. and Canada)
- MENYAILO, Sergei Ivanovich – Acting Governor of Sevastopol
- NEVEROV, Sergei Ivanovich – Deputy Chairman of Russia State Duma
- PROKOPIV, German – Active Leader of the "Lugansk Guard"
- PURGIN, Andriy – Head of the "Donetsk Republic"
- PUSHYLIN, Denys – One of the leaders of the "Donetsk Republic"
- SAVELYEV, Oleg Genrikhovich – Minister for Crimean Affairs
- SERGUN, Igor Dmitrievich – Director of GRU (Intelligence Directorate) (Already sanctioned by U.S. and Canada)
- SHVETSOVA, Ludmila Ivanovna – Deputy Chairman of State Duma
- STRELKOV, Igor – Staff of the GRU

## Canada & Japan

As members of the G-7, Canada and Japan have both committed to imposing additional sanctions against Russia. On Monday, Canada sanctioned two Russian companies and nine individuals. Specifically, they sanctioned the following:

### Individuals

- BABAKOV, Alexander Mikhailovich
- BELAVENTSEV, Oleg Evgenyevich [Sanctioned by U.S. on April 28]
- KOZAK, Dmitry [Sanctioned by U.S. on April 28]
- MOROV, Evgeniy Alexsevevich [Sanctioned by U.S. on April 28]
- PUSHKOV, Aleksey [Sanctioned by U.S. on April 28]

- ROTENBERG, Arkady [Sanctioned by U.S. on March 17]
- ROTENBERG, Boris [Sanctioned by U.S. on March 17]
- VOLODIN, Vyaecheslav [Sanctioned by U.S. on April 28]
- ZHIRINOVSKY, Vladimir Volfovich

#### Entities

- ExpoBank
- RosEnergoBank

On Tuesday, April 29, Japan announced that it would issue visa bans for 23 individuals. Japan has not announced the names of these individuals, but has indicated the list is based on the sanctions imposed by the United States and the EU.

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These sanctions remain quite fluid and additional developments are likely over the coming days; Russia has promised to retaliate against any expanded sanctions while the G-7 warned that these sanctions represented only the beginning of a potential escalation and that they were prepared "to move to broader, coordinated sanctions, including sectoral measures should circumstances warrant." Companies are advised to closely monitor developments and to contact the authors, or their regular Crowell & Moring contacts, with any questions.

*For more information, contact: Alan Gourley, Cari Stinebower, Christopher Monahan, Dj Wolff*

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## 2) Opportunities in the WTO Environmental Goods Agreement Negotiations

On April 2, U.S. Trade Representative (USTR) Michael Froman requested that the U.S. International Trade Commission (ITC) conduct investigations concerning two matters relevant to the negotiation of a WTO Environmental Goods Agreement (EGA): (1) the economic impacts on U.S. companies (producing "like or directly competitive products") and U.S. consumers of the United States "providing duty-free treatment for imports of environmental goods from all U.S. trading partners;" and (2) the estimated value of U.S. imports and exports of these products, likely U.S. export markets, and applied and bound tariff rates in those markets. Ambassador Froman requested that the ITC focus on a list of hundreds of specific products, including palm oil, wind turbines, lithium-ion batteries, and solar panels.

The ITC will administer a relatively quick process for soliciting input for its investigations. Specifically, the ITC will hold a public hearing in relation to the first investigation on May 14, 2014. (Requests to appear at the hearing, as well as any pre-hearing written submissions, must be filed no later than May 6, 2014.) Interested parties may also provide written submissions with respect to the first investigation by May 19, 2014 and with respect to the second investigation by July 1, 2014. The ITC will provide the two reports to USTR on August 4 and October 6, respectively.

USTR will conduct a separate, but similarly quick, public consultation process of its own. In particular, interested parties may submit comments to USTR regarding their negotiating priorities by May 5, 2014 and USTR will hold a public hearing on June 5,

2014. (Interested parties wishing to testify at this hearing must also notify USTR by May 5, 2014.) USTR has requested information regarding: (1) specific products that the United States should seek to include in the negotiations; (2) environmental uses and benefits of such products; (3) other countries that are significant producers or consumers of environmental goods; and (4) how to ensure that an agreement remains relevant.

## **Background**

On January 24, 2014, the United States and 13 other WTO Members announced their intention to negotiate an EGA, which would be a plurilateral agreement under the auspices of the WTO. These countries further indicated that they planned to negotiate on the basis of a list of 54 products identified in September 2012 by the countries that make up the Asia-Pacific Economic Cooperation (APEC) forum, though they also indicated openness to broadening the list of covered products. The EGA negotiations would be open to additional WTO Members willing to pursue the core objective of tariff elimination across a wide range of environmental goods.

On March 21, 2014, the Obama Administration formally notified the U.S. Congress that it intends to enter the EGA negotiations. This notification triggers a 90-day "consultation and layover" process, in which the Executive Branch consults with the Congress, trade advisory committees, and the public concerning the priority environmental goods as to which to seek tariff elimination and other elements of the U.S. negotiating strategy. On June 20, once the 90-day period has run, the United States will be able to participate in the EGA negotiations.

*For more information, contact: John Brew, Josh Kallmer*

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## **3) EU Country of Origin Labeling – Product Safety Update**

The European Parliament recently voted in favor of requiring mandatory country of origin labeling for non-food products in the EU, which would be included in the proposed Consumer Product Safety Regulation (CPSR). Currently, country of origin labeling is voluntary in Europe and may be regulated by individual member states.

The CPSR together with the proposed Market Surveillance Regulation (MSR) are part of an ongoing effort to update the EU's product safety laws by increasing risk analysis and management duties, strengthening market surveillance (including penalties for noncompliance), and improving supply chain transparency and traceability. The proposed regulations are subject to further negotiations and will next be considered by the European Council. Several EU member states, including the United Kingdom and Germany, have indicated that they oppose mandatory country of origin product labeling, and so it remains to be seen whether those requirements will ultimately be adopted.

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#### 4) Sanctions Program Targets South Sudan

In the wake of ever-increasing violence and atrocities in South Sudan, President Obama signed Executive Order 13664 (EO) on April 3, 2014 enabling the United States to target those responsible for the conflict in the almost three year-old country.

After South Sudan declared independence, the United States clarified that the existing U.S. embargo on Sudan did not apply to the new country. The new EO does not alter this policy as the U.S. Office of Foreign Assets Control (OFAC) has clarified that the new EO does not target the country of South Sudan.

Instead, the EO provides OFAC with new authority to designate certain persons that it determines to be "threaten[ing] the peace, stability, or security of South Sudan; commit[ting] human rights abuses against persons in South Sudan; expand[ing] or extend[ing] the conflict in South Sudan or obstruct[ing] reconciliation or peace talks or processes; or undermin[ing] democratic processes or institutions in South Sudan."

To date, OFAC has not yet sanctioned any persons under this new authority.

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

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#### 5) EPA Increases Labeling Flexibility for Pesticide Product Exports

On April 30, 2014, the Environmental Protection Agency (EPA) issued a direct final rule that will be effective on July 28, 2014. This rule will allow labeling information required for pesticide products and devices intended only for export to be placed on collateral labeling attached to the shipping container of the products rather than on the immediate package of each individual product in the shipment. Collateral labeling includes written, printed or graphic matter that is referred to on the label or accompanies the product such as leaflets, bulletins, flyers or brochures.

This direct final rule is intended to address the concern of pesticide industry groups, which had said that a January 2013 final rule removing the term "supplemental labeling" from export-related labeling regulations barred exporters from using labeling attached to a product shipping container to comply with the regulations. The 2013 final rule had made minor changes to EPA regulations on pesticide products and devices that are exported, including the addition of a new requirement that unregistered pesticides being shipped between registered establishments operated by the same producer must be clearly marked as unregistered products intended for export. The EPA states that this new direct final rule will restore "inadvertently eliminated provisions" allowing export labeling to be placed on shipping containers.

If written adverse comments are received by May 29, 2014, the EPA will withdraw this direct final rule and issue a proposed rule to seek public comment on the issue(s) raised by the adverse comments. The EPA will then provide a 30-day period for public comment and will ultimately issue a new final rule.

*For more information, contact: John Brew, Jini Koh, Carolyn Esko*

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## THIS MONTH IN TRADE – OTHER NEWS

### Agency Enforcement Actions

#### Bureau of Industry and Security (BIS)

- April 23, 2014: Pennsylvania Engineering and Manufacturing Firm and CEO Charged with Shipping Machinery To Iran. The U.S. Attorney's Office for the Middle District of Pennsylvania charged the engineering firm and the CEO with conspiracy to evade export reporting requirements and with attempting to smuggle a horizontal lathe machine to Iran, in violation of U.S. export regulations. A horizontal lathe, valued at more than \$80,000, is used in the production of high grade steel, a product used in the manufacture of automobile and aircraft parts.
- April 24, 2014: Engineering Company to Pay \$45,000 to Settle with BIS for Prohibited Export to Spain. The engineering company exported a hot melting prepreg machine, valued at \$825,212, to Spain without obtaining a license from the Department of Commerce. The company agreed to a civil settlement with the Department for \$45,000.

#### Customs and Border Protection (CBP)

- April 14, 2014: Federal Circuit Upholds \$1.8 Million Judgment Against Lumber Company in Customs Dispute. In a suit originally brought by the U.S. Customs and Border Protection, the Federal Circuit affirmed the U.S. Court of International Trade's January 2013 decision that Millennium Lumber Distribution Co. Ltd. and XL Specialty Insurance Co. owed around \$1.83 million, plus interest, for the company's failure to obtain export permits for shipments that were subject to the U.S. – Canada Softwood Lumber Agreement.

#### False Claims Act (FCA)

- April 10, 2014: \$10 Million Settlement in Apparel Duty Evasion Suit. Two apparel importers settled a False Claims Act suit after admitting to fraudulently undervaluing imports to avoid millions of dollars in tariffs at the border.
- April 21, 2014: OtterBox Agrees to Pay \$4.3 Million to Settle FCA Customs Suit. Otter Products LLC (OtterBox) decided to settle a former employee's allegations that it violated the FCA and the Tariff Act of 1930 by knowingly underpaying customs duties owed to the government. The government said that OtterBox failed to disclose the value of "assists" from the dutiable value it declared to the U.S. Customs and Border Protection on entry documents for imported products, among other allegedly false statements.

#### Financial Crimes Enforcement Network (FinCEN)

- April 23, 2014 – New Milenium Cash Exchange, Inc. and its President and Owner Consent to the Assessment of a Civil Money Penalty in the Sum of \$10,000. New Milenium Cash Exchange, Inc. and its President and Owner, Flor Angella Lopez, entered into a Consent to the Assessment of Civil Money with FinCEN. Through its investigation, FinCEN determined that since at least February 2008, New Milenium Cash Exchange, Inc. and its President and Owner, Flor Angella Lopez, willfully violated the Bank Secrecy Act's program, reporting, and recordkeeping requirements.

#### Office of Foreign Assets Control (OFAC)

- GAC Bunker Fuels (USA) LLC Has Agreed to Pay \$157,500 for an Alleged Violation of the Iranian Transactions and Sanctions Regulations. In November 2008, GAC Bunker Fuels (USA) LLC (GAC) supplied bunker fuel in Paranagua, Brazil for an Iranian vessel. OFAC alleged that the transaction was a violation of Section 560.206 of the Iranian Transactions and Sanctions Regulations. The value of the transaction was \$513,141. GAC did not voluntarily disclose the alleged violation.
- Sea Tel Inc. Has Agreed to Pay \$85,113 for Alleged Violations of the Iranian Transactions and Sanctions Regulations. Sea Tel Inc. was accused with exporting 16 antenna systems to its distributor, Shindon Digitech Co. Ltd., between November 20, 2007 and February 26, 2009, with knowledge or reason to know that they were intended specifically for reexportation, directly or indirectly, to Iran. The total value of these transactions was \$378, 281. The transactions were voluntarily disclosed to OFAC by Sea Tel.
- CWT B.V. Has Agreed to Pay \$5,990,490 to Settle Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations. In 2006, CWT B.V. (CWT), a travel service provider incorporated in the Netherlands, became majority-owned by U.S. persons and thus subject to U.S. jurisdiction pursuant to the Trading with the Enemy Act and the Cuban Assets Control Regulations. From August 2006 through November 2012, CWT allegedly dealt in property in which Cuba or its nationals had an interest. CWT's business units outside the United States provided services related to travel to or from Cuba, assisting 44,430 persons. CWT voluntarily self-disclosed the apparent violations to OFAC.

#### **Securities and Exchange Commission (SEC) – FCPA**

- April 9, 2014: SEC Charged HP With Violating the FCPA and HP Agreed to Pay \$108 Million to Settle. The SEC's order instituting the settlement found that HP's Russian subsidiary paid more than \$2 million through agents and shell companies to a Russian government official to retain a multi-million dollar contract with the federal prosecutor's office. The order also stated that HP's subsidiary in Poland provided gifts and cash bribes, valued over \$600,000, to government officials to obtain national police academy contracts. The SEC also found that HP's subsidiary in Mexico paid more than \$1 million in inflated commissions to a consultant with close ties to company officials, and the money was then funneled to one of those officials. HP agreed to settle Foreign Corrupt Practices Act (FCPA) charges for over \$108 million.

*For more information, contact: Michael Appel, Nancy Cruz, Dj Wolff*

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#### **APHIS Proposes Increases in Border Agricultural Inspection Fees**

The Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is proposing to significantly increase agricultural quarantine inspection fees at U.S. ports of entry in addition to adding two new fees. APHIS is also proposing to adjust the hourly rates charged when its employees perform overtime work associated with Agricultural Quarantine and Inspection (AQI) activities.

AQI activities include inspections conducted by the U.S. Customs and Border Protection (CBP) of conveyances, cargo and passenger baggage entering the country as well as APHIS' analytical and scientific work to track pests overseas. In addition, APHIS performs focus inspections at ports of entry and develops the import regulations that protect U.S. animal and plant health



from foreign pests. According to APHIS, the revenue collected from the fees for these activities have been insufficient to cover costs, requiring the use of "appropriated funds that should be available for other important homeland security functions and initiatives."

This proposal lowers certain fees such as those for inspections of international air passengers (from \$5 to \$4 per passenger) and railroad cars (from \$7.75 to \$2 per car) since the current fees generate more revenue than needed to cover costs. However, the proposal increases most fees such as fees for inspections of commercial aircraft (from \$70.75 to \$225 per aircraft), commercial maritime cargo vessels (from \$496 to \$825 per vessel), commercial trucks with a transponder (from \$105 to \$320 a year) and commercial trucks without a transponder (from \$5.25 to \$8 per crossing). APHIS is also proposing to add a \$2 per passenger fee for inspecting cruise vessels and passenger baggage as well as a \$375 fee for conducting and monitoring treatments to imported cargo to minimize pest risks.

In addition, APHIS is proposing to increase the hourly rates charged for Sundays, holidays or other overtime work performed by its employees for any person, firm or corporation having ownership, custody or control of plants, plant products, animals, poultry, animal byproducts, germ plasm, organisms, vectors or other regulated commodities or articles subject to certain inspection, laboratory testing, certification or quarantine under USDA regulations for each fiscal year from 2014 through 2018. The fee of \$51 per hour for Monday-Saturday and holidays would be raised to \$74 for fiscal years 2014 and 2015 and \$75 thereafter. The fee of \$67 per hour for Sundays would be increased to \$98 for fiscal years 2014 and 2015, \$99 for fiscal years 2016 and 2017, and \$100 thereafter.

APHIS is also proposing to increase the overtime rates charged to owners or operators of aircraft for inspection or quarantine services provided by an APHIS employee at an airport outside the regularly established hours of service for these fiscal years as well. The current fee of \$41 per hour for Monday-Saturday and holidays would be increased to \$64 for fiscal years 2014 through 2016 and \$65 thereafter. The fee of \$55 per hour for Sundays would go to \$84 for fiscal year 2014, \$85 for fiscal years 2015 and 2016, and \$86 thereafter.

Furthermore, APHIS is proposing to indicate that agricultural inspections performed by CBP may be billed in accordance with CBP overtime regulations for services performed outside of regular business hours. Comments on these proposals are due no later than June 24, 2014.

*For more information, contact: John Brew, Jini Koh, Carolyn Esko*

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## **Federal Circuit Rules that Certain CBP Notices of Action Are Unlawful Unless Notice and Comment Procedures Are Followed**

On April 14, 2014, the Court of Appeals for the Federal Circuit (CAFC) issued its opinion in *International Custom Products, Inc. v. United States*, in which it affirmed an earlier Court of International Trade (CIT) decision in holding that "CF-29" "Notices of Action" issued by U.S. Customs and Border Protection (CBP) are subject to notice and comment procedures if they have the effect of revoking earlier CBP-issued private letter rulings.

The case involved a letter issued by CBP in 1999 classifying products imported by the Appellant a certain way, after which, in 2005, CBP issued a CF-29 Notice of Action reclassifying all pending and future entries of the product under a tariff provision

subjecting it to much higher duties. After having its protest denied, the Appellant sued in the CIT alleging that 19 U.S.C. § 1625(c) required CBP to follow the notice and comment procedures when a notice of action would modify or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days, or have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions.

The CIT held that the Notice of Action had the effect of revoking a prior interpretative ruling and that a Notice of Action having such an effect would be subject to notice and comment procedures, and the CAFC affirmed, rejecting the argument that a Notice of Action cannot effectively revoke a prior interpretative ruling because a Notice of Action is only specific to a given entry. The ruling could have the effect of significantly limiting CBP's ability to issue Notices of Action that contradict prior classification letters issued by CBP, even when those letters were not addressed to the importer the subject of the Notice, as long as that importer could demonstrate that the Notice has the effect of modifying treatment previously accorded by CBP to "substantially identical transactions."

*For more information, contact: John Brew, Jini Koh, Brian Gatta*

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## **State Department Implements Arms Embargo Against the Central African Republic**

On April 17, 2014, the Department of State implemented an arms embargo against the Central African Republic (CAR). This action reflects U.N. Security Council (UNSC) resolution 2134, which extended the embargo original adopted by the UNSC in December 2013.

Section 126.1 of the International Traffic in Arms Regulations (ITAR), which governs "prohibited exports, imports, and sales to or from certain countries," was amended to add the CAR at Section 126.1(u), making it the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the CAR, except on a case-by-case basis, for:

1. Defense articles intended solely for the support of or use by the International Support Mission to the Central African Republic (MISCA); the UN Integrated Peace building Office in the Central African Republic (BINUCA) and its guard unit, the African Union Regional Task Force (AU-RTF); and the French forces and European Union operation deployed in the Central African Republic;
2. Non-lethal military equipment, and related technical assistance and training, when intended solely for humanitarian and protective use, as approved in advance by the Committee of the Security Council concerning the Central African Republic;
3. Personal protective gear temporarily exported to the Central African Republic by United Nations personnel, representatives of the media, and humanitarian and developmental workers and associated personnel, for their personal use only;
4. Small arms and related equipment intended solely for use in international patrols providing security in the Sangha River Tri-National Protected Area to defend against poaching, smuggling of ivory and arms, and other activities contrary to the laws of the Central African Republic or its international legal obligations;

5. Arms and related lethal military equipment for Central African Republic security forces, intended solely for support of or use in security sector reform, as approved in advance by the Committee of the Security Council concerning the Central African Republic; or
6. Other sales or supply of arms and related material, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning the Central African Republic.

Please do not hesitate to contact Crowell & Moring's International Trade Group with any questions regarding this action.

*For more information, contact: Brian Gatta, Edward Goetz*

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### **Reporting Requirements for Conflict Minerals Law in Question after D.C. Circuit Rules Statute Violates First Amendment**

On April 14, 2014, the U.S. Court of Appeals for the District of Columbia concluded that the conflict minerals reporting requirement rule adopted by the Securities and Exchange Commission (SEC) and the statute that mandated it, Section 1502 of the Dodd-Street Wall Street Reform and Consumer Protection Act, violates the First Amendment.

Specifically, the court ruled that the final rule, "violate[s] the First Amendment to the extent the statute and rule require regulated entities to report to the Commission and to state on their website that any of their products have 'not been found to be 'DRC conflict free.'"

The decision, authored by Judge A. Raymond Randolph, said the label "requires an issuer to tell consumers that its products are ethically tainted, even if they only indirectly finance armed groups. By compelling an issuer to confess blood on its hands, the statute interferes with [the] exercise of freedom of speech under the First Amendment."

The SEC declined to comment on the ruling or provide any clarification on reporting leaving 6,000 issuers and their suppliers unsure of what to report by the May 31, 2014 deadline for calendar year 2013. In this interim period, companies are advised to maintain their compliance efforts because the court only ruled on one aspect of the final 356-page rule.

It is not immediately clear what this decision will mean in terms of 2014 conflict minerals reporting. The decision does not necessarily prevent the SEC from continuing to require reporting by companies going forward, with the exception of the requirement that companies designate products as "not DRC conflict free" if their diligence led to such a finding. The SEC will likely clarify the impact on 2014 filings in the near future. Pending any additional SEC guidance, companies subject to the rule should assume that the June 2, 2014 filing deadline will remain in effect.

Please do not hesitate to contact Crowell & Moring's International Trade Group with any questions regarding this decision and its impact on your compliance program.

*For more information, contact: Brian Gatta, Edward Goetz*

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## **CBP Announces Expanded Public-Private Partnerships and Addition of New Officers**

U.S. Customs and Border Protection (CBP) recently announced a new Reimbursable Services and Donations Acceptance authority, which is a key piece of the agency's Resource Optimization Strategy for CBP Field Operations. This strategy is designed to maximize resources and increase efficiencies to improve travelers' experiences as they arrive in the U.S.

The CBP is authorized to enter into partnerships with both private sector and government entities and to accept certain donations that will help enable CBP to support additional requests for services for a five-year period. Last year, CBP signed five agreements with ports in Houston, Dallas, El Paso, South Texas and Miami.

Also, as a result of fiscal year 2014 funding, CBP also announced the addition of 2,000 new CBP officers. Overall, 44 ports in 18 states will receive additional staffing.

*For more information, contact: John Brew, Jini Koh, Carolyn Esko*

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## **EU Prepares New Value-Added Tax Framework for "Business to Consumer" E-commerce**

Starting next year, the EU will change how value-added tax (VAT) is applied to e-commerce within the community in "business to consumer" transactions. In a move designed to redistribute VAT revenues across Europe, taxing rights on cross-border transactions for telecommunications, radio and television broadcasting, and electronic services will switch to the countries where customers, rather than companies, are based. This change does not impact business to business e-commerce, which provides more than 90 percent of digital services to the community, only transactions between businesses and non-taxable persons or organizations (*e.g.*, an individual buying an e-book or downloading music).

This taxing scheme was recently endorsed by 86 countries at an Organization for Economic Cooperation and Development (OECD) Global Forum on VAT in Tokyo. The OECD said the rise of digital commerce, growth of cross-border business and other developments in global taxation have resulted in a shrinking corporate and VAT tax base, driving the need for reform.

Up to now, major players such as Apple, Microsoft, and Amazon have been incentivized to base their digital operations in low VAT EU countries. For example, in a community where most VAT rates are between 18 and 21 percent, Luxembourg's standard rate of 15 percent, and only three percent on e-books, has long made it a desirable location. Luxembourg has already announced it is raising their rate to 17 percent next year, as they stand to lose an estimated €700 million to other member states.

In addition to basing VAT on where the customer is located, the OECD recommends a simplified on-line registration scheme. The EU is accomplishing this by modernizing and enhancing the VAT Information Exchange System (VIES) to allow for on-line real time confirmation of VAT status to help companies determine whether or not a transaction should have VAT applied to it. Also, non-EU businesses will be allowed to register with a single VAT authority in the Member State of their choice, instead of registering with each country they operate in. Through this one-stop registration scheme non-EU companies can handle all their required obligations under this change.

Please do not hesitate to contact Crowell & Moring's International Trade Group with any questions regarding this significant modification to EU regulations.

*For more information, contact: John Brew, Edward Goetz*

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## **CROWELL & MORING SPEAKS**

**Dj Wolff** presented to the Personal Care Products Council's Legal & Regulatory Council on April 10, 2014 regarding international implementation of the Nagoya Protocol on access and benefit sharing of genetic resources and its implications for global supply chains.

**Jini Koh** will be speaking at the International Compliance Professionals Association's EU Conference on May 14, 2014. The session will discuss royalties and customs valuation.

**John Brew** will be speaking at the American Conference Institute's 9th National Forum on Import Compliance & Enforcement on June 11, 2014. The session will be an import workshop on customs enforcement of other government agencies' (FDA, CPSC, FDA, DOT, EPA, Commerce and others) regulations.

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

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