CLIENT ALERT

The Month in International Trade – July 2019

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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

Finding it hard to stay on top of the latest in tariff increases?

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, Spencer Toubia, Ru Xiao-Graham, Cherie Walterman

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Trump Threatens New 10 Percent Tariff On Remaining $300 Billion In Imports From China

On August 1, President Trump announced via Twitter that starting September 1, the U.S. will impose a 10 percent tariff on $300 billion worth of Chinese goods. According to his tweet, Trump is moving forward with List 4 because of China's broken promises to buy U.S. agricultural goods and to curb the flow of fentanyl into the U.S. market. Trump told reporters that China will not have the ability to negotiate a delay on the September 1 start date, but the four-week period should be enough time to allow ships to deliver current shipments.

Due to the comparatively low number of U.S. exports to China, Beijing will not be able to respond with an equivalent retaliation. However, the Chinese have announced the official suspension of U.S. agricultural purchases from State Owned Enterprises and have moved to devalue their currency. Future actions could include blocking the sale of rare earth metals, of which China has a near monopoly, to the U.S.

The Office of the United States Trade Representative (USTR) should be publishing a finalized List 4 in the *Federal Register* in the coming days. The list is expected to contain revisions to the proposed list from last May to reflect public comments and testimonies from USTR's June hearing.

For more information, contact: John Brew, Walter "Sam" Boone

Recent USTR Section 301 Product Exclusions

The Office of the United States Trade Representative (USTR) released three distinct batches of product exclusion requests from its Section 301 tariffs during July and early-August.

- On July 9, USTR published their sixth batch of List 1 ($34 billion trade action) exclusions in the *Federal Register.* The exclusions applied to 110 specific product descriptions and covered 362 separate exclusion requests. Pumps and machine parts represented a large portion of the exclusions.
- On July 31, USTR published their first batch of List 2 ($16 billion trade action) exclusions in the *Federal Register.* The exclusions applied to 69 specific product descriptions and covered 292 separate exclusion requests. This batch heavily covered electrical tools and appliances.
- On August 7, USTR published their first batch of List 3 ($200 billion trade action) exclusions in the *Federal Register.* The exclusions applied to 10 specific product descriptions and covered 15 separate exclusion requests. Inflatable boats and kayaks were two of the notable inclusions.

For more information, contact: John Brew, Walter "Sam" Boone

OFAC Sanctions 7 Companies, 5 Individuals for Involvement in Iran's Nuclear Program

On July 18th, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) sanctioned seven companies and five individuals involved in the procurement of materials for sanctioned elements of Iran's nuclear program.

Based in Iran, China, and Belgium, these persons allegedly obtained items for Iran's Centrifuge Technology Company (TESA), an entity previously designated by OFAC for its role in the proliferation of weapons of mass destruction. OFAC alleged that this network of companies and individuals collaborated to source aluminum products that are controlled by the Nuclear Suppliers Group (NSG), a multi-national export control regime, for use by Iran in its production of centrifuges.

For more, please see OFAC's press release. For a list of designated parties, click here.

For more information, contact: Dj Wolff, Edward Goetz

Treasury Naming China a Currency Manipulator Could Impact Future CVD Cases

On August 5th, the U.S. Treasury labeled China a currency manipulator, a move not taken by the United States since the early 1990s, as China allowed its currency to fall to an 11-year low against the dollar. Although the People's Bank of China played down the drop, it did link it to the trade tensions with the United States.

Although the Omnibus Trade and Competitiveness Act of 1988 requires the U.S. to engage in negotiations with the International Monetary Fund (IMF) to adjust the rate of exchange, on May 28, 2019, the U.S. Department of Commerce (DOC or Commerce) introduced a draft rule and invited comments for new rules that would considerably change how it addresses countervailing duty (CVD) proceedings involving claims that countries have undervalued its currency.

Countervailing duties are anti-subsidy duties. They are imposed after an investigation finds that a foreign country subsidizes its exports, injuring domestic producers in the importing country. Because countries can determine whether domestic industries are in danger and whether foreign countries subsidize the products, the institutional process surrounding the investigation and determinations has significant impact. Countervailing duties in the U.S. are assessed by the International Trade Administration of the DOC which determines whether imports in question are being subsidized and, if so, by how much. If there is a determination that there is material injury to the competing domestic industry, the DOC will instruct U.S. Customs and Border Protection (CBP) to levy duties in the amount equivalent to subsidy margins.

Petitions for remedies may be filed by domestic manufacturers or unions within the domestic industry, but the law requires that the petitioners represent at least 25 percent of the domestic production of the goods for which competition is causing material injury.

The proposed new rule could put goods from many countries (now China) at risk of higher tariffs. These countries could include Japan, South Korea, India, Germany, and Switzerland. All are listed on the Treasury Department's semi-annual currency report's monitoring list.

Commerce stated that that these "modifications, if adopted, would clarify how the DOC determines the existence of a benefit resulting from a subsidy in the form of currency undervaluation, and clarify that companies in the traded goods sector of an economy can constitute a group of enterprises for purposes of determining whether a subsidy is specific."

The proposed rule, if passed, could open the door for a myriad of new Countervailing Duty Investigations and provide a source for enacting addition new duties in Administrative Reviews for existing CVD orders products from China, now that President Trump has followed through with his promise to name China as a currency manipulator.

For more information, contact: Dan Cannistra, Spencer Toubia

Importers Beware: Your Battery Chargers Are Likely Regulated By DOE

Importers of battery chargers or external power supplies (EPSs), and manufacturers or sellers of consumer products that include battery chargers or EPSs, are likely subject to strict energy conservation standards. By virtue of Department of Energy (DOE) regulations that took effect in February 2016 and June 2018 for EPSs and battery chargers, respectively, manufacturers and importers of these charging devices must now meet stringent conservation standards under the Energy Policy and Conservation Act (EPCA) or risk the assessment of civil penalties.

Under EPCA, DOE enforces mandatory appliance efficiency or conservation standards for over 60 covered products, such as refrigerators, dehumidifiers, washing machines, and recently, EPSs and battery chargers. The EPS and battery charger regulations are expansive, and affect products that charge thousands of standard consumer electronic products, including laptop computers, mobile phones, game consoles, electric razors, and electric toothbrushes. With so many products powered by batteries or external power supplies, the universe of EPCA-regulated chargers seems infinite.

Under the standards, EPSs are defined as devices that convert household electricity to direct current in order to operate a consumer product. The battery charger rule applies to any charger that charges batteries for a consumer product, including chargers embedded in those consumer products. Notably, the rules cover all manufacturers of these charging devices and often the companies that import them from foreign manufacturers. EPCA also requires companies to certify and demonstrate compliance with the standards to DOE, and DOE has authority to independently confirm that these representations are accurate.

The scope of these regulations creates significant potential liability for manufacturers and sellers. The cost of non-compliance may be steep: EPCA penalties are assessed on **each** noncompliant unit distributed into commerce (either sold or made available for sale), at a maximum penalty rate of $460 per unit, with a "look-back" period of five years. As a result, manufacturers and sellers of consumer products are potentially liable for tens of millions of dollars for chargers that are in most cases adjuncts to their core product lines. Moreover, DOE generally seeks the maximum penalty against manufacturers and sellers who knowingly distribute products that violate EPCA standards, although DOE's practice is to reduce these maximum penalties based on mitigating factors such as self-reporting, cooperation and prompt cessation of sales of non-compliant products.

To avoid these substantial civil penalties, a manufacturer or seller of EPSs or battery chargers should develop procedures to determine whether the rules apply to its devices, and to establish, demonstrate, and maintain its current and future compliance with these rules.

For more information, contact: John Brew, Spencer Toubia

Customs Rulings of the Week

- July 15: Alarm Clock for the Hearing Impaired
- July 22: "Calming Comfort Cooling Knee Pillow"
- August 2: Four Layer Vertical Aeroponic Plant Growth System
- August 5: "Avocadomilk"

For more information, contact: Frances Hadfield, Rebecca Toro Condori

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Crowell & Moring Welcomes

Nicole Succar is a Counsel in Crowell & Moring's International Trade Group and a resident in the firm's New York office. She joins Crowell after serving as a senior vice president and head of U.S. economic sanctions advisory, and previously a vice president in the financial crimes division for HSBC, one of the world's largest international financial institutions. At Crowell, Nicole's practice will focus on economic sanctions, anti-money laundering, and other financial crimes issues.

Nimrah Najeeb is an Associate in Crowell & Moring's International Trade Group and a resident in the firm's Washington, D.C. office. She joins Crowell after spending three years at another Washington law firm, where she advised U.S. and foreign-based multinational companies on public international law issues, mergers and acquisitions, government and internal investigations, and third-party due diligence. At Crowell, Nimrah's practice will focus on economic sanctions, export controls, anti-money laundering, and other cross-border international regulatory regimes.

Walter "Sam" Boone is an International Trade Analyst in Crowell & Moring's International Trade Group and a resident in the firm's Washington, D.C. office. He joins Crowell after serving as a trade policy intern at the Corn Refiners Association. Sam also completed an internship at the U.S. Department of Commerce, working in the International Trade Administration's Latin America and Caribbean office. At Crowell, he will provide practice support on import regulatory matters pending before the Office of the U.S. Trade Representative (USTR) and U.S. Customs and Border Protection.

Crowell & Moring Speaks

Frances Hadfield will be speaking at the Sports and Fitness Industry Association (SFIA) Industry Leaders Summit in Baltimore on September 26. She will be speaking on U.S. Trade & Tariffs: The Pain…And the Potential for Savings.

Michelle Linderman and Dj Wolff will be speaking at the Managing Regulatory & Compliance Challenges in Shipping Seminar at Lloyd's Maritime Academy in London on September 27. They will be on a panel entitled, "Sanctions: Current Focus and Potential Changes".

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

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