

# **This Year in Trade – What’s Ahead in 2015?**

February 10, 2015

Moderator: **Jeffrey Snyder, Partner and  
International Trade Practice Group Chair**

The webinar will begin shortly, please stand by. The materials and a recording will be sent to you after the event.

# Agenda

- Free Trade Agreements
- Ongoing Battles Over Duties & Trade Remedies
- Export Controls
- Sanctions
- Anti-money Laundering
- Anticorruption (FCPA)
- Q&A

# Free Trade Agreements

Josh Kallmer, Counsel

Paul Davies, Director (C&M  
International)

# Trade Promotion Authority (TPA)

- **What it is:** Legislative vehicle that permits the Executive Branch to submit trade agreements to Congress for an up-or-down vote, without the possibility of amendment
- **Why it matters:** Other countries frequently won't put their best offers on the table without assurances that agreements will not be picked apart by Congress
- **Where it stands:** The Administration is working feverishly to build congressional support for TPA; Senate and House leaders plan to start moving legislation this month

# Trans-Pacific Partnership (TPP)

- **What it is:** Comprehensive trade and investment agreement among 12 Asia-Pacific economies (including the United States, Japan, Canada, Mexico, and Vietnam)
- **Why it matters:** The TPP would further open markets in this critical region and create new rules, such as on state-owned enterprises and to protect cross-border data flows
- **Where it stands:** Negotiators have been in the “end game” for months, but congressional approval of TPA should allow the remaining pieces to fall into place

## Transatlantic Trade and Investment Partnership (T-TIP)

- **What it is:** The largest and most commercially significant trade and investment agreement of all time
- **Why it matters:** In addition to addressing traditional trade barriers, agreement will tackle costs arising out of unnecessary regulatory differences
- **Where it stands:** Negotiations have been hampered by European concerns over privacy, food safety, and investment protection; 2015 will be a critical year to make progress

# Ongoing Battles Over Duties & Trade Remedies

Daniel Cannistra, Partner

Alex Schaefer, Counsel

Jini Koh, Associate

# New Cases, New Methodologies

- 10 new cases between January 2014 and January 2015
- Filings down, but volume of trade covered increasing?
- “Targeted Dumping” and the new normal

# China Looks to 2016 for an Easing of Prohibitive AD/CVD Duties

- In December 2016, WTO members will need to transition China to a market economy, possibly resulting in significant antidumping and countervailing duty reductions
- Global rule change with global consequences
- The war on 2016 rules will be fought in 2015
- Lessons from Russia's transition

# Developments in CIT Practice

- Alternative dispute resolution processes
  - CIT-annexed mediation
- Small claims in customs litigation

# Updates from U.S. Customs & Border Protection (CBP)

- Automated Commercial Environment (ACE)
  - May 1, 2015: ACE mandatory for all electronic manifest filing
  - Nov. 1, 2015: ACE mandatory for all electronic cargo release and related entry summary filing
- Centers of Excellence & Expertise (CEEs)
  - Transition of post-release processing to Electronics, Pharma & Petroleum CEEs

# Export Controls

Salomé Cisnal de Ugarte, Partner

Chris Monahan, Counsel

Jana Del-Cerro, Associate

DJ Wolff, Associate

# Export Control Reform (ECR)

- Transition end dates in sight
  - October 14, 2015, marks the end of the transition period for the first revised USML and CCL Categories as well as certain definitions under the ECR
- Revisions to USML Categories XII, XIV, maybe XVIII
- Expect small changes

# Export Control Reform & Encryption

- Cloud resolution
  - A new and more modern definition of “export” this year
  - On the back of recent BIS guidance on storefront software
- Tweaks to EAR Encryption Controls
- Unifying ITAR & EAR definitions & requirements
- Further enforcement potential

# AES and Antiboycott

- AES:
  - Russia focus due to lack of clear understanding by Customs
  - Increased cooperation with export control agencies – increased enforcement?
- Antiboycott:
  - Renewed enforcement of Antiboycott laws

# EXPORT CONTROLS REFORM – WHAT TO EXPECT FROM THE EU

## Updated EU control list under Regulation 428/2009

- Changes to EU control list introduced by Commission Delegated Regulation (EU) No 1382/2014 entered into force on 31 December 2014
- The new regulation introduces some 400 changes to take into consideration the latest commercial and technological developments:
  - **new controls** on certain chemicals; special materials; electronics and computers; telecommunications and information security equipment; sensors and lasers; aerospace and propulsion
  - **changes to technical parameters** for nuclear reactor parts and components
  - **relaxing controls** of certain items and technologies that have become more widely available and represent a lower security risk

# EXPORT CONTROLS REFORM – WHAT TO EXPECT FROM THE EU (con't)

## More consistency and simplicity across the EU

- European Commission to carry out **impact assessment of the European Commission Communication of April 2014** in 1H 2015 with a view to publishing a possible **legislative proposal** by 2H 2015
- Impact assessment to focus on four **key priorities** for the reform of Regulation 428/2009:
  - adjust the current rules to the evolving security environment and to the challenges posed by new technologies
  - promote global level playing field
  - create an effective and competitive EU export control regime
  - ensure consistent implementation and enforcement across EU

# Sanctions

Cari Stinebower, Partner

Salomé Cisnal de Ugarte, Partner

# US Sanctions Questions for 2015: Opportunities and Pitfalls

## **Cuba**

- Will the recent relaxations result in genuine opportunities for U.S. business?
- Will financial institutions be willing to accept Cuba-related risk?
- Will business be able to navigate the anti-corruption/anti-bribery and AML risks?

## **Russia/Ukraine**

- Will current measures continue?
- Will the coalition remain coordinated?
- Will increased measures be imposed if hostilities persist?
- Will Russia expand its retaliatory sanctions?

## **Iran**

- Will there be a deal from the P5+1 Negotiations? JPOA expires in June; political framework of a deal to be announced by March; final deal by June
- Will Congress act independently?

# EU SANCTIONS

- **More economic sanctions against Russia** – Council just added 19 individuals and nine entities to the list of sanctioned parties though delayed implementation for one week
- Further **guidance** provided by European Commission on key aspects of Russian sanctions
- **Legal battles** regarding Russian financial sanctions before Court of Justice of the EU (e.g., T-732/14 *Sberbank*; T-737/14 *VEB*; T-734/14 *VTB*)

# Higher Risk Industries & Other Trends

As a result, higher risk industries will continue to be:

- Financial services
- Oil and gas
- Shipping

Other considerations:

- Cross-border compliance in light of data privacy restrictions
- Increased severity of penalties:
  - Fines of more than a billion; imposition of external monitors; “on-shoring” and centralization of compliance; judicial rejection of deferred prosecution agreements; etc.
- “De-risking”
- Permanence of the “sectoral” sanctions model

# Anti-money Laundering (AML)

Cari Stinebower, Partner

Emmanuel Plasschaert, Partner

# US AML Trends for 2015

- More Geographic Targeting Orders
- Greater enforcement role for FinCEN
- Final CDD Rule from FinCEN
- Ongoing tension between data privacy and transparency – particularly cross-border
- Focus on transparency and on individual accountability

# EU AML Reform

- January 2015: political agreement reached between European Parliament and the Council of the European Union on Fourth AML Directive (substituting Directive 2005/60/EC)
- Main changes brought by the Fourth AML Directive:
  - strengthening of the role of the Commission in identifying AML and terrorist financing risks and enhanced coordination efforts among EU Member states (new Sections 6-8)
  - additional guidance to covered persons and Member states on Customer Due Diligence through non-exhaustive lists of factors indicating potentially lower or higher AML risks (new Annexes I and II)
  - beneficial ownership information (new Chapter IV) – EU Member states are obliged to keep central registers of information on the ultimate beneficial owners of corporate entities and trusts. The registers will be accessible to both the authorities and to people with a legitimate interest (including journalists)
- Final adoption of Fourth AML Directive expected in March/April 2015. After adoption, EU Member states will have 2 years to amend their national legislation.

# Anticorruption (FCPA)

Addie Cliffe, Counsel

# Anticorruption (FCPA)

- Recent enforcement actions emphasize the importance of internal controls and a robust compliance program
  - Aggressive investigations
    - More resources devoted to FCPA
    - Proactive investigation tools (e.g., wiretaps, body wires, border searches, physical surveillance)
  - Cooperation between government agencies, multilateral cooperation

# Anticorruption (FCPA)

- Compliance initiatives for 2015
  - Identify areas of risk, e.g.,:
    - Consultants/agents
    - Gifts and entertainment
    - “Anything of value” (offering jobs to relatives of government officials, charitable contributions)
  - Internal review/audit of compliance program

# Speakers – Q&A



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