Programs Organized by Fellow Committee Members:

**Wednesday, April 18:**

9:00 am – 10:30 am, Broadway Conference Room

**Selling Consumer Products into the U.S. and Canada – Navigating a New Course to Safety**

In this program a panel of experts will: (a) provide an overview respecting American and Canadian regulatory agencies and their consumer product safety roles; (b) provide an overview of the US Consumer Product Safety Improvement Act, 2008 and the Canada Consumer Product Safety Act; (c) compare regulatory requirements; and (d) discuss how to develop and implement an effective compliance program.

Panel members will discuss three case studies involving a foreign manufacturer and American and Canadian importers. They will also discuss tips and traps relating to recalls, disclosures and incident reporting.

11:00 am – 12:30 pm, Morosco Conference Room

**How Many Ways Can Importers and Exporters Get Certificates of Origin Wrong? Stories From the Attorneys With Battle Scars**

A panel made up of practitioners from all three of the NAFTA countries will share their personal experiences with NAFTA enforcement in Mexico, Canada, and the United States. They will discuss recent cases where customs authorities have discovered significant errors resulting in substantial fines that could have been easily avoided. In addition, the panelists will discuss NAFTA’s shortcomings, areas where a common policy may result in job creation and how the “common-law” interpretations have differed from civil law rules.

**Thursday, April 19:**

8:00 am – 8:50 am, Empire Ballroom IV

**Breakfast at the Bar: Voluntary Disclosure of Export Violations: When & How to Do It**

Using a detailed hypothetical fact pattern, a panel of seasoned practitioners will discuss best practices for submitting disclosures to the Bureau of Industry and Security, the Directorate of Defense Trade Controls, the Office of Foreign Assets Control, the U.S. Census Bureau, U.S. Customs and Border Protection, and Canadian agencies. Panelists will include leading figures from the ABA Section of International Law, including: Kay Georgi (Co-Chair, Export Controls and Economic Sanctions Committee); Geoffrey Goodale (Co-Chair International Trade Committee); Cyndee Todgham Cherniak (Co-Chair, Customs Law Committee); Peter Quinter (Vice-Chair, Customs Law Committee); and Darren Riley.

9:00 am – 10:30 am, Empire Ballroom IV

**Importing Cultural Objects Into the United States**

Customs and Border Protection is on the lookout for culturally important artifacts that may be entering the United States illegally. A legal framework, composed of both general and specific Customs laws, now regulates the importation of cultural artifacts. As this framework has become more complex, compliance has also become a source of concern for all those who wish to promote the legitimate trade in cultural objects. This panel will draw on a variety of experts to explain how the law in this area developed, how it is enforced, and how an importer of cultural objects can stay within the law.
Also Look for Committee Members at these Sponsored Events:

The ABA Section of International Law's Customs Law Committee and International Trade Committee will be co-sponsoring a reception for the Judges of the U.S. Court of International Trade. It will take place on Wednesday, April 18, from 6:00 p.m. to 7:00 p.m., in the "Gallery on Lex" meeting room on the lobby level of the Grand Hyatt.

The Reception is FREE. We simply ask that you RSVP to Geoffrey Goodale, Co-Chair of the ABA's International Trade Committee, at ggoodale@goodwin.com so that appropriate arrangements can be made. We hope to see you at the Reception!

After the reception, join the Customs Law Committee for dinner at 7:30 at:

Brabant Belgian Brasserie
316 E. 53rd Street (between 3rd and 2nd Avenues)
212-510-8588
http://www.brabantbelgianbrasserie.com/

CBP Audit Update – March Brown Bag Lunch Meeting

By Laura Krachman

On March 27, 2012, U.S. Customs and Border Protection (CBP) audit officials Melvin (Mel) Moreland, Regina Walton, and Elizabeth Chiavetta joined the ABA Customs Law Committee to discuss recent developments and findings in CBP's Office of Regulatory Audit. Mr. Moreland is the Field Director of the Atlanta Field Office for the Office of Regulatory Audit in CBP's Office of International Trade. Mr. Moreland provided background information on the Office of Regulatory Audit, which has 10 offices worldwide and approximately 400 auditors to address issues such as compliance audits, focused assessments, technical assists and partnership program auditing. He explained that other government agencies regarding import programs, and has the unique ability and resources to address import problems in a post-entry environment. Mr. Moreland pointed out that product safety has recently become a significant issue for CBP that is being addressed through interagency working groups. For example, CBP has worked with the Consumer Product Safety Commission (CPSC) to test imported merchandise for lead and has been able to trace samples back to specific entries. Additionally, Mr. Moreland noted that focused assessments are a type of risk-based audit, and that risks in a various area or industry determine what auditors look at in the given Industry.

Regina Walton, a Branch Chief with the Operations division of CBP's Regulatory Audit, discussed common errors identified in Focused Assessment Audits and Quick Response Audits. Ms. Walton identified value, classification, and duty deferral provisions as three areas where errors are common. In the value area, problems often arise from not reporting assists or additional payments to seller, royalty costs, packing costs, and failing to include revised documents. Classification issues tend to arise when companies do not keep their databases updated or when brokers base classification on written descriptions of a product without looking at a physical sample of the product. Duty reduction or deferral provision problems often occur when companies do not have or retain adequate documentation demonstrating that their imported products qualify for the indicated preference program. Ms. Walton stated that best practices for companies to undertake regarding import audits include having formalized practices related to import procedures, having buy-in from top management, and establishing training programs for employees.

Elizabeth Chiavetta, the Acting Director for the Audit Policy Division within Regulatory Audit, discussed the new sampling and offsetting regulations that took effect December 27, 2011. Although statistical sampling had been used previously in audits and disclosures, the new rules formally recognize its use. The new rules set forth three (3) criteria for using statistical sampling: (1) the review of 100% of the imports must not be possible, (2) there must be a sampling plan that is in accordance with generally acceptable
March Brown Bag Lunch Update

Continued from Page 2.

of audits conducted each year is not published, as a variety of different types of audits occur.

Q: If a company says no to CBP’s statistical sampling plan, will CBP carry out the plan anyway?
A: CBP will carry out its statistical sampling plan and will try to explain its methodology to the company.

Q: Is CBP using dollar unit sampling more often?
A: CBP is using dollar unit sampling more often.

Q: Are auditors pulling sample data from ACE instead of other sources? Does this pose a problem if companies are using a different database in their evaluations?
A: If the company is an ACE filer, CBP uses ACE data. CBP discusses the use of different data sources with the company they are auditing.

Q: Is CBP repurposing its focused assessment program or evolving towards bonded warehousing?
A: CBP is always looking to improve the focused assessment process, but there is nothing on the immediate horizon.

Q: Is there value to an importer conducting a simulated self-assessment audit?
A: CBP can factor the added controls that are established based on the self-assessment into their risk-area analysis. CBP is not going to foregoing testing a sample just because a company tested it in their self-assessment.

Additional comments under the issue is discussed in this e-newsletter.

Continuing from another jurisdiction for inclusion in a future issue, please contact one of the legal or expert advice. Consult your own legal counsel before taking action or refraining from action based upon any of the contents of this or any other unofficial source. The contents of this e-newsletter, including materials prepared by law firms, are not edited, and their timeliness and accuracy are not verified, by the ABA or by the Customs Law Committee. The Committee will accept comments on any of the contents of this e-newsletter, for possible inclusion in a future issue. If any U.S. federal tax issue is discussed in this e-newsletter, it was not intended or written by the author or sender for, and cannot be used for the purpose of, avoiding penalties under the Internal Revenue Code or promoting, marketing, or recommending to another party any transaction or tax-related matter.
Spotlight on Committee Leadership

Co-Chair Cyndee Todgham Cherniak

Cyndee is a Canadian international trade (customs, export controls and economic sanctions, NAFTA, WTO, antidumping, countervailing duty, safeguards, government procurement, anti-bribery, etc.) and sales tax (goods and services tax, harmonized sales tax) lawyer. She has a Canadian LL.B degree, a J.D. degree from the University of Detroit, School of Law and an L.L.M. in international and competition law from Osgoode Hall Law School. She has worked at national Bay Street law firms in Canada since 1992.

In addition to practicing law, Cyndee was an adjunct law professor at Case Western Reserve University School of law between 2006-2011 and taught a course on NAFTA and bilateral trading arrangements. In 2011, she became a sessional law professor at the University of Windsor, School of Law and teaches a course on Canada-U.S. trade issues. She is a director of the Canada-China Business Council.

In September 2012, Cyndee will be the first female Chair of the Canadian Bar Association, National Sales Tax, Customs and Trade Section. She will also be a Co-Chair of the ABA, Section of International Law, Customs Committee and a vice-chair of the International Trade Committee and Membership Committee.

Cyndee is grateful that her mentors and friends have helped her reach many career and personal goals.

But, who is Cyndee? Cyndee would prefer to watch the sun rise at Glastonbury Tor or at Machu Picchu and the sun set in Tuscany or at Stonehenge. She is awestruck whenever she sees the aurora borealis. Cynthia means "the moon personified" and Cyndee re-energizes with the full moon. As a teenager, she loved to jog during a light rain and feel the ground under her bare feet. She likes to feed the birds and the squirrels in the morning while drinking herbal tea. Cyndee says she tries to start and end each day on a positive note.

Cyndee started Trade Lawyers Blog (www.tradelawyersblog.com) and Canada Law Blog (www.canadalawblog.com) in 2007. In 2010, she started The HST Blog (www.thehstblog.com). In 2011, she started Canada-US Blog (www.canada-usblog.com) and Happy Lawyers Blog (www.happylawyerblog.com). Cyndee believes that lawyers are sages, healers, life guards, beacons, sherpas, and advocates – there is more to the practice of law if we open our eyes. If you follow Cyndee on Twitter (@CyndeeLaw), you will read inspirational quotes and relevant legal topics.

Cyndee’s favorite symbol is the ripple effect that a drop of water makes in the ocean – what one woman can do and does, can positively affect those near and far.

Vice-Chair Terry Polino

Terry Polino is a partner in Thompson Coburn’s International Trade group, focusing on import compliance, eligibility under the various import preference programs, valuation issues, and country of origin marking and labeling issues. Terry is a founding member of the Association of Women in International Trade (WIIT), now in its 25th year, and a former member of the Board of Director of the Customs and International Trade Bar Association. She began her legal career with U.S. Customs, first in the Office of Regulations and Rulings of the U.S. Customs Service, and then moving into the Office of the Chief Counsel, U.S. Customs Service. Prior to those positions, Terry worked for U.S. Customs, as well as for a customs broker on the northern border.

When not musing about how many classifiers can dance on the head of a pin, Terry has enjoyed being both a hockey mom and a band roadie for her son.

She supports the Animal Welfare League of Montgomery County in its running of no-kill shelters and now that she is an "empty nester" recently adopted two rescue cats: She-Ra, a gorgeous long-haired tortoise shell and Prevy, deemed a "senior" cat by the shelter, though clearly in error as, in human years, he is not that much older than Terry.

Reflecting on her long-time participation in the ABA Customs Law Committee, Terry stated, “My involvement has allowed me to work on important issues, such as the recently proposed changes to certain customs valuation rules relating to transfer pricing. With both US imports and government import regulation increasing, I anticipate another busy and exciting year. I look forward to working with my colleagues on these issues, and welcome our newest members to get involved and contribute their knowledge and experience.”

Terry is a founding member of the Board of Director of the Customs and International Trade Bar Association. She began her legal career with U.S. Customs, first in the Office of Regulations and Rulings of the U.S. Customs Service, and then moving into the Office of the Chief Counsel, U.S. Customs Service. Prior to those positions, Terry worked for U.S. Customs, as well as for a customs broker on the northern border.

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