Changes to Mexican Customs Law

by Shama Patari, Barnes Richardson & Colburn LLP

On Wednesday, December 18, the Customs Law Committee sponsored a brown bag lunch featuring Francisco J. Cortina, a partner at the law firm of Chevez Ruiz Zamarripa, who discussed recent amendments to Mexico’s customs laws.

Mr. Cortina began his presentation with a brief overview of Mexican Customs laws and current importing and exporting statistics. President Peña Nieto implemented changes to Mexican Customs laws to facilitate free trade, increase participation in global markets, revitalize links with Europe, link to the Latin American Consolidation through the Pacific Alliance Agreement (a free trade agreement among Chile, Peru, Columbia and Mexico), and to strengthen Mexico’s position in WTO negotiations.

Some of the recent changes involve improvements to Customs’ technology infrastructure to facilitate import transactions. As of December 10, 2013, all import/export declarations can be filed electronically. Notifications to importers or exporters are also being provided electronically. Whereas notices of post entry import decisions were formerly posted on Customs’ bulletin board, importers may now designate five company representatives to be provided with Customs notifications via e-mail. The notification will remain in Customs’ system for up to twenty days. After the deadline passes, the importer will have 45 days to challenge the notification in tax courts and 15 days to challenge the decision in the Customs courts.

The amendments have streamlined Customs’ review and entry process by eliminating the need for two reviews before goods are cleared for entry. Prior to the amendments, Mexican Customs required two separate entry clearance reviews. The amendment to the law eliminates the second review, speeding up the clearance process.

When asked which amendments will benefit small and medium sized businesses importing goods into Mexico, Mr. Cortina stated that the ability to correct errors on entry documents and alter the

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Supply Chain Education for the Legal Professional

by Luis A. Valdez Jimenez, UW-Madison Law School

According to the Council of Supply Chain Management Professionals, “Supply chain management encompasses the planning and management of all activities involved in sourcing and procurement, conversion, and all logistics management activities.” Traditionally, this field was not a major concern for companies’ upper management. This began to change beginning in the 1980s. With the rapid increase in globalization and increasing sophistication of supply chains, supply chain management became a major focus area for company leadership, as well as

levels of government regulate logistical activities like transportation, warehousing, manufacturing, etc. Beyond this, contracts are necessary when dealing with suppliers, customers, service providers, and even sometimes within the organization. These are by no means the only examples and as supply chains become more sophisticated, the legal issues surrounding them will only continue to grow.

So how has legal education handled the increasing

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Border Searches of Traveler's Digital Devices
by Peter A. Quinter, GrayRobinson P.A.

I have written for the past several years about court decisions regarding the inspection of the contents of laptops, mobile phones, and other digital devices by officers of United States Customs and Border Protection (CBP). These inspections or searches of digital devices are subject to the Fourth Amendment of the United States Constitution against unreasonable searches and seizures by Government officials. The legal question is what is "unreasonable."

CBP has long maintained the legal position that there is a "border search exception" to the Fourth Amendment. For the most part, the courts in the United States, including the U.S. Supreme Court, have agreed with CBP. On December 31, 2013, Senior Judge Edward R. Korman of the United States District Court for the Eastern District of New York issued an opinion denying declaratory relief against CBP and ICE's policies regarding inspection of travelers' electronic devices at the border. Senior Judge Korman found that no reasonable suspicion is required by a CBP or Immigration and Customs Enforcement (ICE) officer to stop, detain, conduct a brief examination, take from the owner/traveler for further examination, and thereafter conduct a forensic, comprehensive examination of the contents of a digital device, including copying all its contents, and sharing those contents with other Federal agencies.

The case is entitled Pascal Abidor, National Association of Criminal Defense Lawyers, National Press Photographers Association v. Janet Napolitano, Alan Bersin, John T. Morton, Case No. 1:10-cv-04059-ERK. The facts of Mr. Abidor's case were these: on an Amtrak train that crossed into the United States from Canada at Port Champlain, a CBP officer examined Mr. Abidor's customs declaration and U.S. passport. Mr. Abidor stated that he briefly lived in Jordan and recently visited Lebanon. The CBP officer demanded to view the contents of Mr. Abidor's laptop, and discovered pictures of rallies of Hamas and Hezbollah, both of which were designated by the U.S. Department of State as terrorist organizations.

Mr. Abidor explained that he was a 26 year-old student in the Institute of Islamic Studies at McGill University in Montreal, and that his specific area of research for his Ph.D. degree is the modern history of Shiites of Lebanon. Mr. Abidor was detained and questioned by CBP for 5 hours before being released. His laptop was retained for further inspection, and returned to him 11 days later by CBP by mail.

As co-plaintiffs, the National Association of Criminal Defense Lawyers argued that its members have a duty to safeguard privileged and confidential information contained in their electronic devices. The National Press Photographers Association argued that its members communicate with sources who request guarantees of anonymity that they may no longer be able to offer if their electronic devices are subject to search by Government officials.

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Judge Korman stated that:

a careful reading of the CBP and ICE directives indicates that these agencies are sensitive to the privacy and confidentiality issued posed by border searches of electronic devices...[D]eclaratory relief is not appropriate because it is unlikely that a member of the association plaintiffs will have his electronic device searched at the border, and it is far less likely that a comprehensive forensic search would occur without reasonable suspicion.

Judge Korman cited the U.S. Supreme Court case of United States v. Montoya de Hernandez, 473 U.S. 531, 538 (1985, which stated, in relevant part:

Routine searches of the persons and effects of entrants [into the United States] are not subject to any requirement of reasonable suspicion, probable cause, or warrant, and first-class mail may be opened without a warrant on less than probable cause.

Judge Korman also cited Third and Fourth Circuit cases concluding that searches of electronic devices constitute routine border searches; hence no reasonable suspicion is required for a CBP or ICE officer to examine them at the border.

Finally, even though Judge Korman stated that the two associations did not have standing, and that there was no need for the Government to establish reasonable suspicion, he stated that "[T]he agents certainly had reasonable suspicion supporting further inspection of Abidor's electronic devices," and dismissed the case.

The Fourth Amendment to the United States Constitution provides:

[T]he right of the people to be secure in their persons, houses, and effects, against unreasonable searches and seizures, shall not be violated...

In my opinion, we have not heard the last word about what is and what is not an unreasonable search by CBP officials at the border. The law is always being interpreted and is always changing. Judges and lawyers have a responsibility to protect the people from the world described in George Orwell's famous book, 1984.

The committee welcomes contributions to the newsletter, including summaries of committee events and developments from other jurisdictions. If you are interested in contributing, please contact the Committee's vice-chairs for Publications.

Upcoming Events


March 13, 2014: Committee Conference Call, 2:00 PM US EST. Dial-in information will be circulated prior to the call.

April 1-5, 2014: Section of International Law Spring Meeting in New York City.

- The Committee-sponsored panel "There is No DNA Test That Will Give You the Origin of Goods – So What Tests Are Applied?" is on Thursday, April 3, 2014 at 9:00am.
- Information regarding Committee dinners and other events will be circulated to the membership by email.
Trade Promotion Authority – Concerns and Questions
by Maureen Thorson, Wiley Rein LLP

On December 9, 2013, the Customs Law Committee cooperated in the presentation of a panel entitled "Do We Need Fast Track/Trade Promotion Authority?" The panel, which was held at the National Press Club, was hosted by Les Glick, a Committee vice-chair. Charlie Blum, former assistant U.S. Trade Representative for negotiations, moderated the discussion between Lori Wallach, director of Public Citizen's Global Trade Watch, and Tom Buffenbarger, president of the International Association of Machinists and Aerospace Workers.

Mr. Buffenbarger began with a short presentation in which he argued that international trade agreements had failed to include sufficient, enforceable protections for labor both at home and abroad. Instead of focusing on passing new Trade Promotion Authority ("TPA"), Mr. Buffenbarger argued that U.S. trade policy should be re-oriented, with an eye to four main issues/objectives.

First, he argued that there is little hard data on the actual effect of trade agreements on employment, and that, rather than simply assume that such agreements increase American jobs, an effort should be made to determine the impact of past agreements on employment. Mr. Buffenbarger then stated that Congress needs to take a more active role in vetting potential free trade partners to ensure that issues such as human rights, labor standards, technology transfers, currency manipulation, subsidization, and environmental standards are adequately and enforceably addressed.

Third, he argued that there should be more definite objectives in negotiating trade agreements, with respect to job creation, export opportunities, etc. Fourth and finally, he advocated for greater transparency in the negotiation and policy-making process, noting that the constituencies that will be most affected by trade agreements often lack information as to the substance of negotiations, or access to negotiators or policy makers. He lamented in particular the lack of any labor representation on the Industry-Trade Advisory Committees that consult with the Office of the United States Trade Representative on trade policy.

Ms. Wallach began her presentation with a history of TPA. She noted that the modern "fast-track" authority, first created in 1974, had been in place for only five out of the past nineteen years. It saw its high-water mark in the mid-1990s, when both the WTO Agreements and NAFTA were passed, after which Congress lost its appetite for ceding so much authority to the executive. Congress voted down fast-track authority in 1998 and it required significant political capital for President George W. Bush to obtain the authority again in 2002. It was allowed to expire again in 2007, and has not been reauthorized since.

Ms. Wallach noted that fast-track authority delegates from Congress to the executive the authority to select trade partners, set negotiating objectives, sign agreements (prior to Congressional vote), to write the agreement and supporting legislation, and requires a vote on any agreement and supporting legislation within 90 days of its offer. Ms. Wallach argued that the fast-track TPA process is in fact highly unusual and that many trade agreements have been made in the absence of fast-track, including the U.S-Jordan FTA, and the establishment of Permanent Normal Trade Relations with China. She also indicated that when one hears that every president since the 1940s has had TPA, what is meant is Tariff Proclamation Authority, not the fast-track process.

After the conclusion of Ms. Wallach's presentation, Mr. Blum opened the floor to questions. Members of the audience asked about the current prospects for the reauthorization of fast-track authority, noting that Senator Levin has touted fast-track as a means for expanding Congressional authority in the trade arena. In response, Ms. Wallach stated that while the leadership of the Senate Finance and House Ways & Means Committee have been in discussions regarding fast-track authority, no bill had yet been produced. Moreover, with specific respect to Senator Levin, Ms. Wallach noted that he had propounded a "new" type of fast-track authority that would condition an up/down vote from Congress on trade agreements on greater Congressional authority during the negotiating stage.

Audience members also requested any insight the panelists could give with respect to the state of the Trans-Pacific Partnership negotiations in general, and the question of how exchange rates and currency manipulation, in particular, are being addressed. The panelists stated that very little information is available regarding the treatment of exchange rates/currency manipulation, but Ms. Wallach did discuss recently leaked documents that indicated the participants are still very far from agreement on many important issues. However, no enforceable standards with respect to the role of state-owned enterprises, labor or the environmental regulations appear to be in discussion.
Changes to Mexican Customs Law (cont’d from page 1)

status of temporary goods will help tremendously. Previously, post-entry amendments to correct import/export declarations were prohibited. The amendments allow for post-entry corrections of the country of origin, classification, and other similar entry summary elements. Importers may also be able to alter the status of temporary goods if they determine the goods should be permanently entered, although this will require the submission of a new form and the payment of duties.

Other changes include the elimination of the requirement that importers work with a customs broker. By December 2014, importers and exporters will be able file their own import or export declarations. In addition, minor penalties assessed against importers may be eligible for a fifty percent reduction through a protest process.

While many of the amendments to the Customs laws are meant to benefit importers and exporters, some changes that may have negative impact. For example, the penalties associated with declaring incorrect valuation data have increased to $1,200.00 per violation up from $120.00 per violation. Similarly, Mexican Customs intends to increase post-entry audits, which will now be handled through the electronic system. Finally, in the case of a seizure of merchandise, an importer will now only have ten days in which to show the goods were legally imported, after which the goods will be destroyed, sold or donated.

Mr. Cortina also discussed changes in the regulations governing maquiladoras. Some importers have used maquiladoras to import products for consumption in Mexico without paying duties. The amended regulations now require importers to pay value-added (VAT) tax of 16% for products imported into a maquiladora. To avoid paying the VAT, maquiladoras will be required to re-register and ensure that the products they manufacture are exported. This new regulation will take effect in 2015 and the rules regarding the new registration will be published at a later date.

When asked about the difference between shelters and maquiladoras, Mr. Cortina explained that a shelter is a manufacturing facility established and run by Mexican entities to help foreign businesses that are not prepared to establish a maquiladora. The new regulation limits the time shelters may be used to four years. After that time, a company will be required to establish a maquiladora. The four-year time limitation applies equally to established new shelters. Consequently, all existing shelters will have to convert to maquiladoras within four years from 2014.

For more information, please feel free to contact Mr. Cortina at fcortina@chevez.com.mx.

Supply Chain Education (cont’d from page 1)

importance of supply chain management to global companies? In general, law schools have not focused on the topic holistically, addressing only portions of it. Many law schools offer classes in various aspects of the field including international trade law, maritime law, aviation law, and etc. In addition, the University of Denver has a Transportation Law Journal. Currently, a handful of law schools offer Master of Laws (LLM) degrees in Admiralty and Maritime law and Florida Coastal School of Law offers an LLM in Transportation and Logistics Law. However, business education offers a number of approaches to the study of supply chain management. Many businesses schools are offering MBA programs that incorporate supply chain management as a key part of the curriculum. For example, the Grainger Center for Supply Chain Management, part of the Wisconsin School of Business at the University of Wisconsin-Madison, offers a specialized MBA in Supply Chain Management in conjunction with numerous industry partners. Other business schools like the University of Texas-Austin and Michigan State University offer executive certificates that can be completed online.

How can legal professionals access these types of business programs? For those considering law school, dual degree programs may be a way forward. Such programs are possible at those universities offering both the J.D. and M.B.A. programs that focus on supply chain management, such as the University of Wisconsin-Madison. Dual programs can be advantageous because the curriculum is integrated, and both degrees can be completed in four years instead of five, reducing the ultimate expense of obtaining the two degrees. Attorneys can also take advantage of the previously mentioned executive education options. These offer flexibility to the practicing attorney.

As the importance of supply chain management grows, the demand for attorneys specializing in the field will likely increase. Considering the complexity of the area, attorneys engaged on supply chain issues need to be proficient and current in the area in order to serve the needs of their clients. While law schools have been slow to adapt, business schools and business management programs have helped to fill the gap by providing additional opportunities for attorneys to learn about the field.
Spotlight on Committee Leadership

Vice-Chair Chris Skinner

Chris Skinner is a senior associate in the International Trade regulatory group of Squire Sanders, based in the firm’s Washington DC office. His practice encompasses virtually all areas of trade regulation, but focuses specifically on export controls, economic sanctions, antitrust and customs law and regulation. Within these areas, Chris has extensive experience developing compliance programs; preparing voluntary and directed disclosures; drafting export licenses and agreements; conducting internal compliance audits and investigations; performing transactional due diligence; and advising clients on all aspects of U.S. economic sanctions programs, with emphasis on Iran and Burma. His customs practice, in particular, has touched on all major areas of customs law, including classification, valuation, origin, duty drawback, foreign trade zones and enforcement.

Although Chris began his legal career focusing on antitrust and consumer protection litigation, he was quickly drawn to international trade regulation. In particular, he thrives on the diversity and complexity of legal issues, dynamic regulatory landscapes, variety of clients and industries, and opportunities to work directly with client personnel of differing backgrounds to solve compliance problems and implement solutions.

When not analyzing customs rulings or keeping up with Federal Register notices on Export Control Reform, Chris enjoys spending time with his family, following his favorite ice hockey team, traveling and running. And, as an avid outdoorsman, he never passes on an opportunity to camp, backpack or sea kayak – the more remote the destination the better.

Vice-Chair Greg Kanargelidis

Greg Kanargelidis is a longstanding member of the Customs Law Committee and is currently serving his second term as Vice-Chair of the Committee. He is a Canadian lawyer and partner with the law firm Blake, Cassels & Graydon LLP based in Toronto, Canada. Greg articled at Blakes and was called to the Bar in Ontario in 1990. He practices exclusively in the areas of customs, international trade, and commodity tax law. He leads the international trade and investment law group at his firm and is recognized as a leading international trade and customs lawyer in Canada.

Greg represents Canadian, U.S. and foreign clients on global trade and investment matters. He advises on all areas of customs law. He regularly appears before the Canadian International Trade Tribunal as well as other courts in customs and dumping-related proceedings. He also assists clients with respect to planning, compliance and appeals involving value-added, excise and other commodity taxes. Among other things, Greg also advises on multilateral and bilateral free trade agreements, economic sanctions, and export and import controls.

Outside of his legal practice, Greg spends time with his wife and three children. Greg also devotes significant time to community and charitable organizations. For the past four years, Greg has led a community organization which taught Greek to children aged 3 to 13 on Saturdays. Among other things, Greg also sits on the board of a charitable organization which raises money to preserve Greek language and culture. In 2012, Greg was awarded the Queen Elizabeth II Diamond Jubilee Medal by the Government of Canada. The Medal was created to mark the 2012 celebrations of the 60th anniversary of Her Majesty Queen Elizabeth II’s accession to the Throne as Queen of Canada, and was awarded to 60,000 Canadians to honour significant contributions and achievements by Canadians.