Customs Law Committee

Update on the Atlanta CEE
by Damon V. Pike and Jason Chang – The Pike Law Firm, P.C.

On June 3, 2014, Robert Thommen, CBP Deputy Director of the Center of Excellence and Expertise ("CEE") for Consumer Products and Mass Merchandising ("CPMM") at the Port of Atlanta, provided an update on the development of the CPMM CEE at the monthly luncheon of the Atlanta International Forwarders & Brokers Association, which was co-sponsored by the ABA’s Section of International Law.

CEEs are consolidated points of processing for post-release trade activities. They were created to provide greater consistency and harmonization to the processing of imports across the nation’s Ports of Entry. There are currently ten CEEs, and each CEE is responsible for a specific industry sector assigned to it. The assignments of industry sectors to CEE locations were based on a multitude of factors with the key factor being the locations of the industry's largest importers based on value and volume of imports.

Participating importers, i.e., those who are C-TPAT and ISA members, benefit from CEEs because they do not have to conduct post-release processing at each Port of Entry through which their goods are being imported. Instead, participating importers’ post-release processing is handled by a CEE. This provides importers with the benefit of a more streamlined inquiry process to resolve concerns. Because CEEs are able to focus on a specific industry, they are better able to respond to the dynamic trade environment of its assigned industry and bring all of CBP’s expertise on a single industry together at a national level. Because each CEE is responsible for a particular industry, CEEs provide importers with more predictability through a more unified approach to enforcement. For example, tariff classification disputes within a particular industry are resolved by the CEE as opposed to multiple Ports of Entry providing multiple interpretations.

CEEs are virtual organizations that consist of employees at various Ports of Entry. Although CEE employees are located at different ports across the country, CEEs are coordinated from a central location and provide CEE-participating importers with a single point of contact for all their trade inquiries. Because CEEs specialize in a specific industry, unnecessary duplicative work involving compliant imports can be eliminated -- resulting in fewer cargo delays and reduced costs. Ports of Entry can instead shift their focus to high-risk

Where Financial Crimes and Customs Law Intersect
by Christine H. Martinez, Barnes, Richardson & Colburn, LLP

On May 22, 2104, the Customs Law Committee was honored to welcome Deborah Morrisey, Senior Vice President at Citibank and former Assistant Special Agent in Charge for DHS’ Immigration and Customs Enforcement Homeland Security Investigations for a brown bag lunch event hosted in the Miami, Florida office of GrayRobinson, P.A.

Committee Vice-Chair Peter Quinter moderated Ms. Morrisey’s guided tour of a typical money laundering investigation, following both the initial examination that occurs inside a financial institution and law enforcement's investigation. In either case, Committee Members learned that following the funds is critical for identifying wrong-doing. Ms. Morrisey shared stories of “nested” accounts, shell companies, correspondent banking relationships, and Nominee Incorporation Services. While numerous U.S. government agencies, including the Department of Justice’s Federal Bureau of Investigation and Drug Enforcement Agency, the Department of Treasury’s Internal Revenue Service and Financial Crimes Enforcement Network, and the Department of Homeland Security, might get involved in a money laundering investigation, much work is done within financial institutions to identify red flags, unwind complicated transaction structures, and identify wrong-doers. Compliance within those institutions is an ongoing effort, working all of the time to identify suspicious transactions.

When those transactions involve parties from multiple countries

(see page 2)

COMMITTEE LEADERSHIP

Co-Chairs: Teresa M. Polino, Christine H. Martinez

Vice-Chairs: Brandi Frederick, Leslie A. Glick, Gregory Kanargelidis, Peter A. Quinter, David Salkeld, Christopher H. Skinner, Maureen E. Thorson, Sidney N. Weiss

Contact information is available on the ABA’s website at:

ABA SIL Customs Law Committee Webpage
Spotlight on Committee Leadership: Outgoing Chair Terry Polino

Terry Polino has been active in Committee leadership for many years. She has just completed her second stint as Co-Chair. In June 2014, we sat down with Terry Polino to discuss her insights on the Customs Law Committee’s past – and its future.

When did you join the ABA Customs Law Committee? What roles/positions have you held? How has the Committee changed over time?

Although I have been a member for many years, I became more active in the Committee about 7 or 8 years ago. Initially, my involvement was limited mostly to working on panel presentations for the Section Meetings in the Spring and Fall. After both planning and participating in a number of these programs, it was suggested that I might want to consider a more formal role with the Committee as a Vice Chair. I served as a Vice Chair for about 3 years and am just concluding my second year as Co-Chair of the Committee. One of the major changes in the Committee over that period concerns the role played by the Committee’s Vice-Chairs. Initially, their role was more of an “ad hoc” assistant to the Chairs. That has evolved over time to the current structure in which the Vice-Chairs are delegated specific areas of responsibility at the beginning of the Bar year.

You’ve worked both at Customs and in the private bar. How can organizations like the Customs Law Committee help customs attorneys in both government and agency practice?

Just about all of the Committee’s activities can be of benefit to attorneys in the Customs area, whether working in the government or private practice. The Newsletter and the Year In Review articles contain useful and relevant information; the programming provides insights from some of the top resources in the area, including many government attorneys or other officials; and the projects have focused on important issues, such as whether changes should be made to the jurisdiction of the Court of International Trade or other areas to make the court even more useful for those involved in trade actions, especially perhaps small and medium sized companies.

How can the Committee work with other bar associations (CITBA, WITA, WIIT)?

Throughout the U.S., there are associations, including bar associations and various trade associations that share many common interests with the ABA Customs Law Committee. We have already organized programs in conjunction with some of these other associations. These have been successful and well-received by the members of both organizations. Also, there is precedent for working with other associations on our projects, thinking specifically of the work done by CITBA on the Court’s jurisdiction project. I think these efforts can, and should continue and be expanded. The customs bar is relatively small, and even the trade area in general is a relatively small group, such that both groups can benefit from sharing information and resources to further the goals of the various organizations.

Update on the Atlanta CEE (cont’d from page 1)

The CPMM CEE in Atlanta was activated in August of 2013 and is currently in its beginning phases. At this time, it has 17 participating U.S. importers, all of which participate in C-TPAT and ISA. Since the CPMM CEE’s inception, these 17 importers have filed more than $12.8 billion in import transactions through the CPMM CEE, with shipments cleared through 72 different ports of entry. The CPMM CEE currently consists of 60 employees and will gradually expand as the program is implemented. CBP expects the CPMM CEE to be fully implemented and operating within approximately 2 years — with the pharmaceutical, petroleum, and electronics CEEs expected to reach full implementation even earlier.

Once CEEs are fully implemented, they are expected to perform all post-release processing including entry summary verifications, liquidations, protests, reconciliations, drawbacks, liquidated damages and penalty initiations, and commercial fraud case developments. In addition, CEEs will provide subject-matter expertise to HQ policymakers on decisions affecting the CEE’s industry, which will help ensure policies are executed uniformly.

For any questions and comments about CEEs, the CBP can be contacted by e-mail at CEE@cbp.dhs.gov.
Determining Country of Origin Across Borders
by Maureen E Thorson, Wiley Rein LLP

Among the programs that the Customs Law Committee sponsored at the Section of International Law Spring Meeting’s was a panel discussion entitled “There is No DNA Test That Will Give You the Origin of Goods—So, What Tests are Applied?.” The panel brought together lawyers from the United States, Canada, Mexico, and Australia to discuss the tests and regimes affecting country-of-origin, with the aim of giving attendees an understanding of the different reasons why countries apply origin tests, and how those tests operate in international business settings.

The panelists included Sue Ross, representing the United States, Cindy Todgham-Cherniak, representing Canada, and Francisco Corina Velarde of Mexico. Rounding out the panel was Andrew Hudson, representing Australia. The panelists began by providing an overview of the most common international business situations that require origin determinations or declarations.

First, Ms. Ross discussed the importance of determining origin in the importing context. Not only are origin determinations/declarations required in determining liability for normal duties, but for determining whether antidumping duties might apply to shipments. Ms Todgham-Cherniak then discussed the importance of origin determinations in the export context, for ensuring compliance with export controls and sanctions rules. Mr. Hudson underscored the importance of origin determinations in the antidumping and countervailing duty context, and for ensuring the eligibility of goods for special treatment under free trade agreements (FTAs), and for ensuring compliance with environmental laws, such as those aimed at curtailing illegal logging. Mr. Cortina Velarde rounded out the panel’s initial presentations by focusing on the origin issues unique to NAFTA eligibility determinations.

The rest of the panelists’ discussion focused on the areas flagged in their initial presentations: origin for FTAs, for determining dumping liability, and for complying with export controls. Mr. Cortina Velarde noted that significant numbers of new FTAs have been concluded since 1995, each with its own set of origin rules. Although many FTAs share commonalities with respect to determining origin (a reliance on content requirements, for example), there is no “one-size-fits-all” approach to ensuring compliance. Some FTAs require origin certificates; others do not, and there may be exceptions and special cases unique to each agreement, reflecting the treaty partners’ desires not only to ensure free trade, but competitive advantages for their own countries.

The panel then went on to discuss origin in the trade remedies context. Mr. Hudson provided background on the “honey laundering” scheme, in which Chinese-origin honey was transshipped through Australia and other third countries, repackaged, and then shipped to the United States under non-Chinese origin designations. Trade remedy orders provide unscrupulous shippers with an incentive to conceal the true origin of goods, giving importers additional reasons to vet the bona fides of their clients. Ms. Todgham-Cherniak discussed a recent case before the Canadian International Trade Tribunal that considered whether certain screws made in Taiwan and subjected to U.S. processing operations were subject to a Canadian antidumping duty order on Taiwanese fasteners. Because of the U.S. processing, the case also implicated the NAFTA rules of origin, thus showing how multinational supply chains can implicate multiple origin regimes.

The panelists also discussed the importance of establishing origin for export purposes. Mr. Hudson discussed Australia’s new “strict liability” regime for errors in export declarations, which has gone a long way to correcting longstanding problems with incorrectly prepared declarations, but has also increased the importance for Australian exporters of getting origin determinations right. Ms. Todgham-Cherniak discussed the difficulties faced by Canadian companies shipping goods containing U.S. parts or inputs: while U.S. law forbids shipments of such goods to certain countries, such as Cuba, Canadian law forbids compliance with the U.S. law. Ms. Ross discussed how U.S. exporters must take into account the rules in destination countries, and in particular whether any FTAs are in effect, in determining whether to label or provide origin certificates indicating U.S. origin for exported goods.

The panelists concluded their discussion by stressing the importance of internal product tracing procedures aimed at documenting (1) suppliers’ identities and (2) the origin of inputs and finished products. Government verifications of origin declarations generally focus on whether an importer or exporter has adequately documented origin. Poor recordkeeping may therefore expose companies to serious and significant liability. Given the many different legal regimes that depend on origin determinations (including trade remedies, FTA eligibility, export controls/sanctions, and environmental laws such), supply traceability is increasingly crucial to success in international commerce.
Spotlight on Committee Leadership: Outgoing Chair Terry Polino (cont’d from page 2)

What do you think are the Committee’s greatest accomplishments?

Even though our Committee focuses on a very specialized area of the law, much of our programming for the Section Meetings has been developed to benefit both our members and others in the Section. Walking this line is a “fine art” and I am proud of the way many of our members have stepped up on the planning and execution of these panels. I also think our Year in Review articles have been among the best and again their success is owed to the many Committee members who have stepped forward to write or to edit sections of the articles and to our Publications Vice-Chairs who kept it all running smoothly.

What is your favorite moment or memory from past meetings or Committee events you’ve attended?

I have numerous “favorite” memories from past meetings and Committee events, but I think one of my “most favorite” times was the International Law Section Spring Meeting in DC in 2013 when we arranged for a Committee Dinner that we opened up to members of other Committees. It was a great way to meet new people and to introduce them to our Committee and some of its most active members.

What’s next for you? Will you remain involved with the Committee leadership (through its steering group, perhaps)?

I definitely intend to remain active in any way I can, including through the steering group. There are a couple of projects that were initiated during the last year in which I am very interested and hope to play an role in as the projects move forward. One of these involves trying to open a line of communication between the Committee and CBP to allow for direct discussion on various issues the Committee has identified as ones for which a dialogue with CBP would be useful.

I grew up in a border town, and as strange as it may seem to many, Customs has been a big part of my life since I was small child. I enjoy working in Customs law and I truly have enjoyed the people I have met and the relationships I have formed through these many years as a result of being a Customs attorney. I may be biased, but I really do think this is one of the best areas of law in which to practice. Looking outside of work, my greatest accomplishment has been raising my son and seeing him graduate this May from Towson University. Along the way, while I was raising him, he did a good job of turning me into a sports fan, and I still enjoy rooting for, and attending games for both the DC and Baltimore teams. Over the years, I have found a number of customs law colleagues in other cities willing to talk about whose hockey, baseball or football team is the best, and perhaps even engage in a little good-natured razing from time to time.

Where Financial Crimes and Customs Law Intersect (cont’d from page 1)

and goods and services crossing borders, Customs and Trade attorneys may be asked to help avoid unfortunate consequences. Goods and cash may be seized by U.S. Customs and Border Protection while an investigation is ongoing; funds may be frozen while the U.S. government determines the breadth of a money laundering network; and documents and records may be requested informally or via Subpoena.

Ms. Morrisey offered both insight into the complete life of such an investigation and tips for practitioners trying to help otherwise innocent bystanders comply with government requests for information. She ended the conversation with several Red Flags to be wary of:

- Know who you’re dealing with: Is the address more than a post office box?
- Look for anomalies: Are third parties involved where they normally wouldn’t be?

Are invoices overvalued? Do "the numbers" make sense for the channel of trade?

- Are the goods and the money moving in the pattern expected?
- Are invoices overvalued? Do "the numbers" make sense for the channel of trade?

A variety of public and private resources are available to review issues of concern and help importers who think they might be unwittingly caught up in an international financial scheme. FinCen, the Financial Crimes Enforcement Network, publishes useful information about money laundering for those who might be affected, including banks, casinos, money services businesses, mortgage brokers, insurance companies, and others at: http://www.fincen.gov/.

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