Customs Law Committee

Upcoming at the Fall Meeting

The ABA Section of International Law’s fall meeting is scheduled to take place October 21-25 in Buenos Aires, Argentina. The meeting will feature several programs sponsored or co-sponsored by the Customs Law Committee. The programs are as follows:

October 23, 2:30 – 4:00 pm: NAFTA, Mercosur and CAFTA: Should They Merge into One Hemispheric Agreement – Committee stalwart Les Glick will moderate a panel of attorneys from Brazil, Argentina, and Canada, as they discuss the potential opportunities and pitfalls that might result through creation of a unified trade agreement among North and South American countries as an alternative to the World Trade Organization.

October 23, 4:30 – 6:30 pm: Doing Your Due Diligence: Deals With International Players – An expert panel will discuss cross-border regulatory issues that arise in international deals, such as export controls and anti-bribery compliance; questions will be taken in real-time both via microphone and text message.

October 24, 2:30 – 4:00 pm: Understanding Latin American Customs Valuation and Duty Relief – Francisco J. Cortina and committee vice-chair David Salkeld will moderate a panel regarding the range of customs valuation methodologies applicable in Latin America, including different approaches to additions and deductions from value. The panel will also discuss the different duty relief programs available across Latin American countries and provide tips and tricks for minimizing duties.

October 24, 4:30 – 6:30 pm: Customs Enforcement Strategies in Civil and Common Law Jurisdictions – Committee co-chair Christine Martinez will moderate a panel regarding the different approaches to customs enforcement in civil and common law jurisdictions, and provide strategies for lawyers trained in one tradition to recognize claims and defenses available in jurisdictions operating under the other.

Committee leadership has reserved a table at breakfast each morning for interested members, and are also working on setting up a dinner for Wednesday, October 22. Please contact the committee co-chairs, Christine Martinez and Greg Kanargelidis, for more information on these plans as they develop!

Quick Hits from the Courts

by Maureen Thorson, Wiley Rein LLP

The new bar year has already seen its fair share of interesting - and controversial - activity at the U.S. Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC). Some recent happenings include:

The on banc decision in Trek Leather: The results are in - “persons” other than importers of record may be held liable under 19 U.S.C. 1592 unless they, rather than their corporations, were the importer of record responsible for entry, the full CAFC went the other way. Noting that 1592 describes liability as attaching both to persons who “enter” goods and persons who "introduce" them, the CAFC concluded that corporate officers could not be held liable under 19 U.S.C. 1592 unless they, rather than their corporations, were the importer of record responsible for entry.

Relief – Francisco J. Cortina and committee vice-chair David Salkeld will moderate a panel regarding the range of customs valuation methodologies applicable in Latin America, including different approaches to additions and deductions from value. The panel will also discuss the different duty relief programs available across Latin American countries and provide tips and tricks for minimizing duties.

CIT’s referral of a CBP penalty action to mediation: Formal, court-ordered mediation is fairly rare in Customs disputes, but in United States v. Tenacious Holdings, Judge Carman granted the defending importer’s motion for referral, despite the United States’ objections. The Department of Justice opposed mediation, arguing that the importer was seeking mediation of the penalty.

Corporate officers and employees of importing businesses react? And will there be a petition for cert? Stay tuned!

Committee Leadership

Co-Chairs: Christine H. Martinez, Gregory Kanargelidis

Vice-Chairs: Jennifer Diaz, Brandi Frederick, Leslie A. Glick, Jamie Joiner, Peter A. Quinter, David Salkeld, Christopher H. Skinner, Maureen E. Thorson, Cyndee Todgham Cherniak, Sidney N. Weiss

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

ABA SIL Customs Law Committee Webpage
Update from Mexico: Estimated Prices for Footwear
by Francisco J Cortina & Ana Figueroa of Chevez, Ruiz, Zamarripa y Cia

On August 29, 2014, the “Decree announcing several measures for productivity, competitiveness, and combat of undervaluation practices in the footwear sector” was published in the Mexican Federal Official Gazette. This Decree, which was issued by President Enrique Peña Nieto, entered into force on the day following its publication, August 30, 2014.

Through the publication of the Decree, the Federal Government established a framework that intends to boost the productivity of the footwear sector, as well as to prevent and combat undervaluation practices of imported merchandise.

Consequently, on September 5, 2014 the Federal government published the “RESOLUTION that modifies the one which establishes the mechanism for guaranteeing the payment of contributions in mercantile transactions subject to estimated prices by the Ministry of Treasury and Public Credit” (Resolution of estimated prices). This Resolution establishes several estimated prices in the importation of footwear (an example of which may be found below this article). It is noteworthy that said estimated prices do not set a customs value of the goods to which the importers must adhere. It does, however, establish that in case the goods are imported with a declared customs value inferior to that of the estimated prices, the importer will have to deposit a guarantee equivalent to the contributions and fees that would originate from the difference between the declared value of the merchandise and the estimated prices, and, at the moment of importation, attach to the import summary the certificate of the deposit or guarantee issued by the credit institution or brokerage house authorized to manage the guarantee accounts.

In these terms, the aforementioned mechanism for guaranteeing the payment of contributions refers to a Customs Account of Guarantee, in this regard, the Tax Administration authorizes financial institutions in which the fees or contributions can be deposited. As of the date of importation of the goods, the authorities have a six month period to initiate verification powers on those entries. If the authorities do not exercise said verification powers within the referred period, the importer may cancel the guarantee and collect the interest it produced.

If verification powers are initiated within the six month period, the guarantee will be extended until the verification process is finalized. In case the authorities determine an omission of contributions and fees, they will cash out the amount deposited as guarantee.

In the event the importer does not cancel the guarantee in said period, the corresponding amount will be transferred to the Federal Treasury where it will be available for the next two years. If the importer does not request a refund of the deposited amount within the two year period, said amount will be lost in favor of the Federal Treasury and can no longer be refunded.

In connection to the foregoing, it is important to highlight that even if the authorities do not initiate verification powers within the aforementioned six month period, they can still commence them within the general 5 year time lapse following the importation, even if the guarantee has already been withdrawn from the customs account.

Originating from this subject, it is worth nothing that many Mexican government actions tend to center around the protectionism of various national products, particularly those of the footwear section.

<table>
<thead>
<tr>
<th>TARIFF CODE</th>
<th>DESCRIPTION</th>
<th>COMMERCIAL UNIT</th>
<th>ESTIMATED PRICE (US DOLLARS PER COMMERCIAL UNIT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6401.10.01</td>
<td>Footwear with a metallic point for protection.</td>
<td>Pair</td>
<td>21.18</td>
</tr>
<tr>
<td>6402.99.01</td>
<td>Sandals and similar plastic items, which sole has been molded into a single piece.</td>
<td>Pair</td>
<td>5.21</td>
</tr>
<tr>
<td>[...]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6403.51.01</td>
<td>Footwear for men, of “Welt” build.</td>
<td>Pair</td>
<td>61.41</td>
</tr>
</tbody>
</table>

(NB: The rest of this table can be found in the publication of the Resolution of estimated prices in the Mexican Official Gazette, published on September 5, 2014.)
Jamie Joiner is the Managing Member of Joiner Law Firm PLLC, a growing international trade compliance boutique firm she launched in April 2012. Jamie’s areas of practice include import and customs law, export controls, economic sanctions, antiboycott restrictions, and requirements related to NAFTA and other duty preference programs. Based in Houston, Texas, Jamie has represented importers in customs matters involving numerous CBP ports in the United States, with a particular focus on the southern border ports.

In addition to her work with the ABA, Jamie has served as Chair of the Houston District Export Council (DEC), a diverse group of volunteer international trade professionals appointed by the U.S. Secretary of Commerce to encourage and support export expansion activities and the promotion of exports at the local level. Through the DEC, Jamie has ample opportunity to offer pro bono advice to start-ups and new-to-market companies to help them understand regulatory restrictions on importing and exporting. Jamie also serves as the Houston Area Coordinator for the Export Legal Assistance Network (ELAN), a cooperative program among the Federal Bar Association, U.S. Department of Commerce and U.S. Small Business Administration that provides pro bono guidance to U.S. companies that are new to exporting.

A Louisiana native, Jamie enjoys southern cooking, spending time with family and friends, and travel. She and her husband of five years most recently traveled to the Amalfi Coast in Italy and are currently planning their next adventure to the Cayman Islands.

**Quick Hits from the Courts (cont’d from page 1)**

solely in order to avoid responding to discovery requests. Nonetheless, the CIT granted the motion, noting that penalty actions often settle, even without the court’s involvement. The Court appears to have found relevant to its decision the relatively low value of the penalties sought and the fact that the provision at issue had expired, such that the allegedly negligent misclassification was unlikely to recur with other importers or entries.

**Twice is Too Much:** The CIT granted a motion for fees under the Equal Access to Justice Act in a customs action. In Shah Bros., Inc. v. United States, the plaintiff imported a smokeless Indian tobacco product; CBP classified the product as “snuff,” rather than “chewing tobacco,” and the importer brought a suit in which the agency confessed judgment. Before that confession, the importer made a second entry of the merchandise, and upon CPB’s requiring its classification as snuff, the importer protested and later filed suit on the second entry. CBP did not confess judgment in the second action until several years after it confessed judgment with respect to the first. Judge Pogue found that CPB’s position in holding out on the confession of judgment in the second action, and otherwise forcing the importer to litigate the same issue twice, was not “substantially justified.”

**Watch out for deadlines!**

Under CIT Rule 83, cases are only supposed to stay on the reserve calendar for 18 months, and any motions to extend that time must be made at least 30 days prior to the expiration of the 18-month period. Any case not removed from the calendar within 18 months (or allowed to stay there pursuant to a motion for extension) is to be dismissed for lack of prosecution. Out-of-time motions, such as the ones at issue here, are to be granted only where there is “excusable neglect” -- a high standard to meet. In Rockwell Automation, Inc. v. United States, Judge Ridgway ultimately granted out of time motions to permit several cases involving the classification of “certain short-body timing relays used in manufacturing applications” to remain on the reserve calendar, putting heavy emphasis on the fact that the government had agreed that it would not be prejudiced by the extension. The judge’s opinion is a good reminder to all Customs practitioners to stay on top of those reserve calendar deadlines.