Customs Law Committee

Get Prepped for the Fall Meeting

The ABA Section of International Law’s fall meeting is set for October 20-24 in Montreal, Canada. Even if you don’t parlez francais, we hope to see you at committee-sponsored events, as well as at the committee breakfasts and dinner! The panels that the Customs Law Committee is sponsoring are as follows:

Oct. 21, 9:00 – 10:30 am: Developing and Implementing Global Legal Compliance Systems in a Multicultural World- This plenary session will cover multinational compliance and supply chain issues, with a focus on cultural barriers to compliance. In a roundtable conversation, panelists will cover best practices for ensuring compliance with foreign regulatory systems as well as extraterritorial U.S. laws.

Oct. 22, 9:00 – 10:30 am: How has Globalization Changed Free Trade? - An expert panel, moderated by committee co-chair Les Glick, will cover the continued relevance of NAFTA in light of subsequent agreements, as well as providing case studies regarding the operation of rules of origin. Panelists will also discuss the effects of TPP for NAFTA – and vice versa.

Oct. 22, 11:00 am – 12:30 pm: NAFTA at 21: Successes, Controversies, and Lessons Learned - This panel – with significant Committee member participation! – will cover key issues arising under NAFTA, including trade remedies, investor-state disputes, intellectual property, verification audits, and origin determinations, and discuss how companies can best take advantage of the benefits the agreement offers.

Oct. 23, 9:00 – 10:30 am: Flying over the 800 Pound Gorilla: Canada and Montréal Lead the Flock of FDI into Mexico’s Booming Aerospace Industry- A panel of attorneys from Mexico and Canada will discuss Mexico’s increasing success as a destination for aerospace manufacturing and investment. Panelists will discuss the existing regulatory systems that have contributed to the boom, as well as proposals for future programs that will deepen foreign investment in Mexico’s aerospace sector.

Committee leadership has reserved a table at breakfast on October 21 and 22 for interested members. Please contact the committee co-chairs, Les Glick and Greg Kanargelidis, for more information on these plans as they develop!

Customs Legislation – What’s Next?

by Maureen Thorson, Wiley Rein

The summer brought a lot of last-minute changes to trade and customs legislation, including the long-awaited retroactive extension of the Generalized System of Preferences, and extension of the African Growth and Opportunity Act.

However, Congress left Washington for its August recess without passing a customs reauthorization bill. This is the most pressing outstanding Customs-related issue now pending before the House and Senate, and everyone is agreed on most of the issues. So, what’s the hold up?

Legislators have been stymied - not only in this Congress - by debates over the substance of trade remedies enforcement provisions. One version of the provisions, called the PROTECT Act, is generally favored by importers, while another version, ENFORCE, is favored by domestic industries.

Both versions have supporters in Congress - to the extent that, in May, the Senate passed a customs reauthorization bill (H.R. 644) that reflected the provisions of ENFORCE, while the House passed the same bill with the PROTECT provisions. That leaves it up to the conferees to resolve the differences, which to be fair,

(cont’d on page 2)

COMMITTEE LEADERSHIP

Co-Chairs: Les Glick, Greg Kanargelidis

Vice-Chairs: Jennifer Diaz, Jamie Joiner, Shama Patari, Peter A. Quinter, Rebecca Rodriguez, Christopher H. Skinner, Maureen E. Thorson

Contact information is available on the ABA’s website at:
ABA SIL Customs Law Committee Webpage
Committee Participation at the NCBFAA
by Les Glick, Porter Wright
Several committee members were speakers at the National Customs Brokers and Freight Forwarders Association of America’s 1st Global Trade Educational Conference, held August 3-4th in Chicago.

Pictured from left to right are Committee member Larry Hanson of Larry Hanson & Associates, Houston Texas; Committee member Adrienne Braumiller of Braumiller Law Group, Dallas, Texas; Committee Co-Chair Les Glick of Porter Wright, Washington D.C., and Committee Vice Chair Peter Quinter of GrayRobinson in Miami.

Also speakers but not present for the photo were committee members George Tuttle III of the Law Offices of George R. Tuttle in San Francisco and Susan Ross Partner at Mitchel Silberburg and Knupp in Los Angeles.

Committee members interested in copies of the conference agenda and available powerpoint presentations may contact Co-Chair Les Glick.

Customs Legislation – What’s Next? (cont’d from page 1)

go beyond ENFORCE/PROTECT. (The House version of the bill also includes certain language regarding climate change, which Democrats have requested be struck). But ENFORCE/PROTECT debate has prevented reauthorization from going forward in the past. Indeed, while there were early hopes that the differences in the House and Senate versions of H.R. 644 would be resolved prior to the August recess, this did not happen.

But that doesn’t mean that progress has totally stalled. During the August recess, trade staffers charged with conferencing the House and Senate bills successfully agreed to adopt the Senate bill’s language placing responsibility for investigating allegations of that importers are evading antidumping and countervailing duty orders with U.S. Customs & Border Protection, as called for by the ENFORCE Act, rather than with the U.S. Department of Commerce (“Commerce”), as the PROTECT Act would have had it.

Still, trade staffers have not yet reached compromise on judicial review of evasion decisions – while both of the bills being conferenced provide for judicial review, the standards involved are distinct. ENFORCE incorporates a standard similar to that used in Commerce’s antidumping duty investigations and reviews, i.e., review for substantial record evidence and lawfulness. The PROTECT Act, by contrast, provides only for review under an arbitrary and capricious standard.

Congress returned to Capitol Hill just after Labor Day, but it is not clear how soon the conferees will complete their work. Further, Congress arguably has higher priorities right now – including a September 30 deadline for passing a continuing resolution or other legislation to fund the Government, as well as further extensions for the Highway Trust Fund. In the meantime, we can expect industry supporters of both version of the evasion legislation to continue to press the conferees.

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.
Committee Co-Chair Les Glick Publishes New Book

Customs Law Committee Co-Chair Les Glick is the author of a new guide to U.S. Customs rules: Navigating U.S. Customs Laws: What You Need to Know (Quick Prep), published by Aspatore Books. The book breaks down complicated customs rules for business executives and others that are involved in import transactions on a day-to-day basis, but who do not practice as customs lawyers. In addition to information on entry, classification, origin, and other “standard” customs law issues, the book covers Free Trade Agreement concerns and import regulations enforced by agencies other than CBP, such as antidumping duties and the rules of the U.S. Food & Drug Administration. Those interested in further information can find it here.

Quick Hits from the Courts
By Maureen Thorson, Wiley Rein

Although the Customs Law Committee newsletter took a summer vacation, the U.S. Court of International Trade (CIT) did not. Interestingly, many of the Customs-related opinions released this summer arose from collection proceedings.

In United States v. Selecta Corp., the CIT denied a motion for judgment in a collection case, finding that CBP failed to provide sufficient detail in its complaint. The case involved an importer that filed a prior disclosure with CBP regarding various classification and valuation errors made regarding its entries of wearing apparel, and tendered an amount equal to the underpayment of duties. However, by the time CBP issued a penalty notice covering the interest owed on those entries, the importer apparently had gone out of business and neither the attorney that prepared and filed the disclosure nor the importer’s resident agent had any idea where to find the company or its personnel. CBP thereafter filed an action to collect interest penalty. However, the CIT found that the complaint did permit it to conclude that a Section 1592 violation had occurred. It therefore denied CBP’s motion for judgment with instructions that the agency amend its complaint or have its action dismissed.

In United States v. Horizon Prods. Int’l, Inc., a Customs penalty action, the Court partially granted and partially denied the United States’ motion for judgement. The case involved plywood entered into the United States under an inappropriate duty-free classification. Because the importer conceded to the court that the goods were misclassified, the Court found the claimed duty amount payable in full, as well as pre-judgment interest on the amount. However, the Court found that genuine issues existed regarding whether the importer exercised reasonable care, despite having misclassified the entries. Because questions existed regarding whether the import was negligent, there were also questions regarding the proper amount of the penalty, should negligence be found to exist. As such, the Court denied CBP’s motion for summary judgment on the question of negligence and associated penalties.

In United States v. CTS Holding, LLC, the CIT denied an importer’s motion for summary judgment in a Customs penalty action. The importer argued that (1) Customs failed to perfect its administrative remedies prior to bringing the collection action, and (2) could not collect from it because it was not the importer but a different corporation. On the first question, after reviewing the pre-penalty notice, penalty notice, and the parties’ communications, including the defendant’s petitions for mitigation, the judge found that CBP properly perfected its remedies with respect to a negligence-based action, and that the defendant was properly made aware of a finding of negligence-based penalties, despite the fact that the penalty notice did not formally state that the penalty was based on a finding of negligence. On the second point, the judge found that an importer’s successor-in-interest can be held liable for the importer’s Customs penalties, and that, although the defendant claimed not to be the importer’s successor, there were insufficient undisputed facts on the record to permit the judge to so find. Thus, the motion for summary judgment was denied.