Update from the Fall Meeting in Dublin

By Peter Quinter

The Customs Committee and the International Trade Committee co-sponsored a program entitled “Security at the Dinner Table - Ensuring Food Safety Throughout the Global Supply Chain” at the ABA Section of International Law Fall Meeting in Dublin, Ireland. The program successfully showcased both the European Union and United States regulatory processes relating to food supply chain security. Customs Law Committee Vice-Chair Peter Quinter, Becker & Poliakoff, was the moderator, and the three esteemed speakers were Raymond Ellard of The Food Safety Authority of Ireland, Jeff Bailey, Assistant General Counsel for Del Monte Fresh Produce, and Dr. Susanne Kettler, Director of Regulatory Affairs, Coca-Cola Europe.

Attendees of the meeting were able to learn about food safety as it relates to the European regulatory system from Dr. Kettler. Dr. Kettler discussed the major functions of the European Food Authority aimed at the protection of animal and human health, protection of consumers, and the protection of fair trade. Dr. Kettler described the regulatory process in the EU and pointed out the challenges of differing interpretations of regulation and directives by member states. Dr. Kettle’s PowerPoint presentation will be posted on the Customs Committee web-site.

Continued on Page 6

Cynthia Allen Discusses Key Updates to the ACE Portal

By Melanie Frank

On October 7, 2011, the Customs Committee held a brown bag lunch and welcomed Cynthia Allen from U.S. Customs and Border Protection (“CBP”) to discuss current initiatives and future changes to ACE. One of the key items of discussion was the creation of a new account type for attorneys and consultants. For those who were unable to attend, here is a summary of the discussion. Questions and answers have also been incorporated into this summary.

Cynthia Allen is the Executive Director of the ACE Business Office in CBP’s Office of International Trade. During the brown bag lunch, Ms. Allen first noted some recent changes in CBP practice, certain new requirements and future modernization initiatives for ACE.

Recent Changes in CBP Practice

“Post Summary Corrections”

Are Now Required. Ms. Allen reminded the Committee that, effective September 22, 2011, all corrections to ACE entry summaries must be made through an electronic Post Summary Corrections (“PSCs”). Post Entry Amendments (“PEAs”) and Supplemental Information Letters (“SILs”) will no longer be accepted for corrections of ACE entries.

Continued on Page 2
October Brown Bag Lunch Update, cont.

Continued from Page 1

CBP is Discontinuing Courtesy Liquidation Notices. Ms. Allen discussed the fact that CBP is phasing out the use of paper courtesy liquidation notices. She noted that extension notices, suspension notices and pink liquidation notices will continue to be issued in paper form; however, CBP is discontinuing its practice of sending “no change” liquidation notices.

ACE Modernization and CBP Initiatives

The overall focus of the discussion was modernization of ACE and a move toward electronic handling of all entry information and notices.

New ACE Account for Attorneys and Consultants.

A key addition to ACE is a planned expansion to include an additional account type for attorneys and consultants. The ACE Business Office has requested comments from the trade bar regarding its “vision” for this account type, including what attributes would be most useful, what information is necessary for attorneys and consultants, how the information should be presented in the portal and what search tools would be helpful. The ACE Business Office has requested that submissions be presented in one consolidated Great Idea Form (“GIF”), if possible. A TSN Subcommittee has been established to document the GIF, and once approved, implementation of the new account type will require announcement in the Federal Register. For more information or to provide comments, please contact Lee Sandler, the Subcommittee Leader, at lsandler@strtrade.com.

Electronic Posting of Bulletin Liquidation Notices on CBP.gov. Previously a GIF was submitted by the TSN Entry Committee requesting a web-based portal for the official posting of liquidation notices (bulletin notices). In response, CBP has proposed that the notices be posted to CBP.gov. In addition, CBP is proposing to eliminate the manual posting of liquidation notice bulletins at the Customs House. The regulations would need to be changed to move to electronic-only posting. In the meantime, CBP expects to launch a test program in which it will post the notices to CBP.gov and will continue the manual postings in the Customs House. In accordance with the regulations, the official post date would continue to be the date posted in the Customs House, and that date would be reflected in the CBP website.

New Focus on the ACE Reports Tool. Ms. Allen stressed that because ACE is the system used by CBP, it is important to eventually have all importers using the portal. The ultimate goal will be to eliminate the need for ITRAC reports. CBP is considering ways to improve the tool and will establish multi-disciplinary teams that will be tasked with assessing priority initiatives. CBP has analyzed prior ticket reports as a means for making improvements, and is focusing on key short-term updates where possible. Eventually, CBP is projecting a fully paperless process for entries from start to finish, with electronic entry summaries and electronic filing of protests.

Direct Access to the ACE Portal for the Court of International Trade. CBP is pursuing ways to provide direct access to the Court of International Trade (“CIT”), so that it can retrieve entry information directly from ACE. This would significantly reduce paper filings with the CIT and the electronic file would allow for some sortable data. Optimaly, the record for an entry would include all history of that entry, including court appeals. CBP is currently testing electronic options and is in comprehensive discussions with the Department of Justice and the CIT.
DiNucci Shares Recent Developments at HQ

By Cylinda Parga

On November 10, 2011, Acting Deputy Assistant Commissioner Richard DiNucci visited Atlanta to speak at a luncheon jointly sponsored by the International Freight Forwarders and Customs House Brokers Association of Atlanta and the American Bar Association’s Customs Law Committee. The topic of the luncheon was “Recent Developments at CBP HQ’s Office of International Trade.”

During the course of his hour-long presentation, Mr. DiNucci outlined the main operating principles for the Office of International Trade set by Commissioner of Customs Alan Bersin. These principles include:

1. National Security vs. Economic Security – The Office of International Trade acknowledges and affirms that the principles of National Security and Economic Security are actually one and the same. The Office of International Trade is tasked with bringing these two principles back into balance. As one of the main architects of C-TPAT, Mr. DiNucci acknowledged that the balance had swung too far away from trade facilitation in favor of supply chain security/national security in recent years.

2. Continued Modernization – The Office of International Trade is committed to the continued modernization of the office, and plans to accomplish this goal via both increased automation and an increased focus on identifying and developing more efficient processes. The Office is committed to fixing or abandoning ineffective, inefficient processes in an effort to continue the modernization of CBP. This modernization will continue regardless of whether Mr. Bersin is confirmed for a full term as Commissioner.

3. Data Sharing between CBP and Other Governmental Agencies (“OGAs”) – Increasing efficiencies by increasing the amount of data shared between CBP and OGAs.

4. Enforcement – Increased focus on imposing real consequences on habitual or problem violators, rather than wasting time with unnecessary or unrealistic penalties, e.g., issuing penalties for $1 million that are eventually mitigated down to $500.

In addition to discussing the above operating principles, Mr. DiNucci provided an overview of the following current “Hot Topics” receiving attention at the Office of International Trade:

1. Continued development and implementation of CBP’s Centers for Excellence and Expertise -- These new industry-specific centers are intended to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and strengthen critical agency knowledge on key industry practices.
   a. There are currently two Centers -- one in Los Angeles covering the electronics industry and another in Newark covering the pharmaceutical industry.
   b. The Centers will function as “virtual ports” which will solely focus on their respective industries, although the ports of entry will still serve a role in facilitating the importation of targeted goods.
   c. CBP plans to create as many as 10 or more Centers, with the next one anticipated to open in the spring of 2012.
   d. CBP believes the Centers will develop and enhance the agency’s knowledge of the targeted industries, leading to increased focus on specific problem areas within each industry (such as proper and uniform tariff classification).

2. Changing Role of Customs Brokers -- CBP is exploring ways to expand the responsibility of customs brokers while being mindful of brokers’ obligations to their clients. CBP is also examining the current penalty regime applied to customs brokers to determine what changes may result in an increased focus on the “bad actors” within the brokerage community. Potential areas of increased responsibility include:
   a. Validating importers
   b. Implementing stronger powers of attorney
   c. Revising the current definitions of “supervision” and “control”

3. Entry Simplification -- As published in the November 9, 2011 Federal Register, CBP plans to implement a test program designed to simplify the Automated Commercial Environment (“ACE’) entry process. The new functionality will simplify the entry process by allowing participants to submit 12 required and three (3) optional data elements to CBP at any time prior to the arrival of the conveyance transporting the cargo to the United States.

Continued on Page 4
November Brown Bag Lunch Update, cont.

This data will fulfill merchandise entry requirements and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. This initial phase of the test will be open to entries filed in the air transportation mode only. Progress in the development of ACE and its functionality has been greatly improved with the addition of Cindy Allen to CBP HQ leading this effort.

4. OGAs and Co-operative Data Sharing -- Commissioner Bersin is working together with his counterparts at various other agencies to encourage them to develop and adopt a “risk management” approach to targeting and inspections, given the reality that no government agency can inspect every shipment (although 100% of all shipments are screened). One key component to improving interagency cooperation is the Border Interagency Executive Council (“BIEC”). The Council serves as an Executive Advisory Board to interagency importation and safety related issues. This includes legislation coordination, the development of information sharing mechanisms among participating government agencies, and risk-management strategies such as partnership with trusted traders.

5. Penalty Process -- Commissioner Bersin believes that CBP’s current penalty process lacks rationality and real consequences. CBP is striving to implement a system where penalties are only assessed for a good reason. If successfully implemented, such a system would result in a decrease in the number of penalties which are mitigated. CBP is also reviewing the role of bonding requirements and liquidated damages within its current penalty regime.

6. Develop and Maintain Close Coordination with Homeland Security Investigations (“HSI”) – CBP is committed to working closely with HSI to combat instances of intellectual property rights violations and HSI want to focus on prevention by implementing strategies to identify potential violators prior to importation.

7. Trade Transformation – CBP will continue to transform the way it deals with the trade, from top to bottom. An important key to this transformation is the continued implementation of the Centers for Excellence and Expertise.

8. Transfer Pricing and Customs Valuation – CBP has gathered comments in response to its advance notice, and will next publish a formal “1625” notice containing the proposed text of its new policy in the form of a Revocation of an existing HQ Ruling Letter, and importers will have 30 days to comment.

Customs New from Around the Globe: Mexico Sets 4 Month Term to Notify Importers of Laboratory Test Results.

In 2010, the Mexican Supreme Court en banc determined that Article 152 of the Mexican Customs Law breached the Mexican Constitution because it does not provide a legal term for a customs entry port to notify an importer of the result of the laboratory analysis of a sample of merchandise that is of difficult tariff classification. Previously, the Second Chamber of the Mexican Supreme Court had established a legal term of 4 months for this notification to cover that loophole. In October 2011, the Collegiate Circuit Tribunals established an integrated interpretation considering the two previous precedents of the Supreme Court and as a result considered the resolutions issued in compliance with the 4 month term to be legal.

It can be found here (in original Spanish):


*If you have an interesting Customs Law update from another jurisdiction for inclusion in a future issue, please contact one of the Co-Chairs.*
Spotlight on Committee Leadership

Co-Chair Cortney O’Toole Morgan

Cortney O’Toole Morgan is a partner in the Washington, DC office of Barnes, Richardson & Colburn. She advises foreign and domestic companies on all aspects of international trade regulation, planning and compliance, including customs, export controls, economic sanctions, embargoes, international trade agreements and preference programs. Cortney represents clients across various industries, including pharmaceuticals, chemicals, automotive, agricultural commodities, plastics, steel, textile and apparel and consumer electronics. Her practice in customs law includes issues of tariff classification, valuation, country of origin marking, preferential duty programs, customs audits, logistics security, seizures, penalties and voluntary disclosures.

This is Cortney’s second year serving as a co-chair of the Customs Law Committee. She is very excited and proud to be serving with such capable and dedicated leaders. “This looks to be a great year with a wealth of substantive policy issues on our plate and solid programming for the Committee to promote and explore. I look forward to working with our veteran and dedicated committee members. I also look forward to expanding the reach of our committee to new members and others within the ABA.” Cortney has authored several articles on customs and trade issues, including the annual ABA Customs Law Year-in-Review, and the seven-volume U.S. Customs and International Trade Guide, published by Lexis Nexis/Matthew Bender, which is updated semi-annually.

When not working, Cortney volunteers her time as chair of the DC Emmies, a regional alumnae board for her high school alma mater, Emma Willard School. In her free time, when she isn’t running around after her kids (Healey, 6 and Kirk, 3), Cortney enjoys traveling and reading.

Vice-Chair Les Glick

Vice Chair Les Glick is a partner in the Washington Office of Ohio based Porter Wright Morris & Arthur. Les specializes in international trade, customs, and Food and Drug Administration (FDA) law. He represents U.S. importers and manufacturers, customs brokers and foreign exporters in countries such as Mexico, India, Brazil, Indonesia, Argentina as well as the U.S. to name a few. Les has been a prolific writer. His best known publication is “GUIDE TO US CUSTOMS AND TRADE LAWS.” He also wrote “Understanding the North American Free Trade Agreement” and numerous articles and book chapters.

When he is not writing, he is often traveling, primarily to Mexico and Latin America. However, in 2011 Les was in India where he gave a speech on trade and customs law.

Les has practiced customs law for many years and observed that the practice has been shifting to more emphasis on homeland security issues such as the Customs Trade Partnership Against Terrorism (CTPAT), on which he has worked with many US and foreign clients doing security audits and CTPAT applications. He noted that “in law school I was drinking Corona, now I am wearing hard toe boots doing CTPAT security audits of their seven plants in Mexico.” Les also has a long history of bar association service.

In the last ten years he has been active in the ABA. In the International Law Section, in addition to being Vice Chair of the Customs Law Committee, he is also Vice-Chair of the Mexico Committee. Also in the ABA Administrative Law and Regulatory Practice Section, he chairs their International Trade and Customs Law Committee that focuses more on administrative issues such as rulemaking, agency due process etc.
Dublin Food Safety Program Update, cont.

Continued from Page 1

Mr. Ellard described Ireland's food safety protocols within the EU and in comparison to the United States and provided a treasure-trove of information. Cyndee Todgham Cherniak states “Mr. Ellard was honest, frank and generous in providing the perspective of a high level government official in this important area.” Mr. Ellard's PowerPoint presentation will be posted on the Customs Committee web-site.

Participants were able to compare the EU food safety system with that of the U.S., when they heard from Jeffrey S. Bailey of Del Monte Fresh Produce. Mr. Bailey discussed compliance issues with the U.S. Food and Drug Administration (FDA). He educated attendees about the new regulations arising under the Food Safety Modernization Act (FSMA) aimed at prevention. Under the FSMA, the FDA has new tools of enforcement which can include denial of imports and mandatory inspection of foreign facilities. The new law also places a heavy burden on the importer of FDA regulated food and products into the United States.

This e-Newsletter is for general information only. The contents, including comments prepared by attorneys and professional consultants, cannot be relied upon as 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.