citba.org
Customs and International Trade Bar Association

Quarterly Newsletter
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CITBA & Related News

UPCOMING PROGRAMS

INTERNATIONAL TRADE UPDATE

MARCH 3-4, 2011

Georgetown Law School will host its annual International Trade Update in Washington, D.C. from March 3-4, 2011. This is a unique opportunity for CITBA members to spend time with experts exploring up-to-the-minute developments in international trade and customs law. Online registration information regarding this event is available at https://www.law.georgetown.edu.

CITBA RECEPTION

On March 3, 2011, following the International Trade Update CITBA will host a reception in honor of Chief Judge Randall R. Rader of the CAFC and Chief Judge Donald C. Pogue of the CIT. The reception will take place at the Hotel George-Bistro Bis, 15 E Street, NW, Washington, DC from 6:30-8:30pm and will include cocktails (open bar) and a buffet. Online registration information regarding this event is available at http://www.citba.org/events.php.

ABA SECTION OF INTERNATIONAL LAW SPRING MEETING

APRIL 5-9, 2011

CITBA is pleased to announce that it is a cooperating entity for the ABA Section of International Law's 2011 Spring Meeting! CITBA members will enjoy the same Spring Meeting discount registration rates that members of the ABA receive.
Early bird rates expire on March 18, 2011.

The 2011 Spring Meeting is a "Must-Attend" meeting for international lawyers. Between 1,300 and 1,500 international practitioners are expected to attend the 2011 Spring Meeting, making it the best attended event in the ABA Section of International Law's history. Attendees will be able to take advantage of a unique opportunity to network, and earn a full year's worth of CLE credits from the slate of more than 50 cutting-edge CLE programs arranged in several program tracks.
Online registration is available at http://apps.americanbar.org.

In this issue:

Links of interest:

CITBA Homepage

US CIT Homepage

US Court of Appeals for the Federal Circuit Homepage

US Customs and Border Protection

Bureau of Industry and Security

Office of Foreign Assets Control

International Trade Administration

US International Trade Commission

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ANNOUNCEMENTS

CITBA Past Events

On Wednesday, February 2, 2011, CITBA sponsored a very successful seminar on fraud in agency trade proceedings, held at the CAFC in Washington. Panelists included CAFC Chief Judge Rader, CIT Judge Barzilay, IA Chief Counsel John McInerney, Joyce Branda (Director, Fraud Section, Commercial Litigation Branch, DOJ), and Alan Cohen, Senior Attorney, Penalties Branch at CBP; Joe Dorn served as moderator. Over 100 people attended the seminar. There was lively Q&A after the panel discussion and a reception with light refreshments following the seminar.

News from the Clerk of the Court of International Trade

By: Tina Potuto Kimble

Several rules changes went into effect in January that are worth highlighting. The CIT has changed some rules to mirror changes in the Federal Rules of Civil Procedure. For example, the CIT Rules now follow the Federal Rules of Civil Procedure's straightforward time computation approach -- "days are days" regardless of whether the time period at issue is more or less than 10 days and time periods are revised so that a period of less than 30 days will now be counted in multiples of 7. Also, revisions to Rule 15(a) change when a party may amend pleadings without leave of court. A party now may file an amended pleading without leave of court within 21 days after service of a responsive pleading or within 21 days after being served with a motion to dismiss. Leave to amend can still be sought from the Court after that 21 day period under Rule 15(a)(2).

Other changes are designed to make practice before the CIT easier and to clarify points of confusion. Rules 7 and 56.2(e) have been amended to change the deadlines for filing a motion for oral argument and setting a hearing date. They now will be due 21 days after the service of a response or reply, and the Rule 56.2(e) requirement for the parties to request a hearing date within 30 days after the reply has been eliminated. Form 11 Notices of Appearance and Form 18 Notifications of Termination of Access to BPI are added to the list of documents available for multi-case docketing on CM/ECF. And, by the way, those Form 18's will now be due within 30 days of a qualifying event pursuant to revised Rule 73.2(c)(4). Finally, an addition to the Practice Comment for Rule 81 directs attorneys on how they should cite internet-based resources in their filings.

Of course, for the complete list of Rules revisions, consult the Court's web site. As always, please contact your case manager if you have any questions about these Rules or any other issue.

CM/ECF – Training

The U.S. Court of International Trade will provide CLE credit for training workshops in New York, NY and in Washington, D.C., on new features and procedures in the Case Management/Electronic Case Files (CM/ECF) system. The New York class will be held at the U.S. Court of International Trade, One Federal Plaza, Room 580, New York, NY on Thursday, June 16, 2011 between the hours of 2:00 PM and 4:00 PM. The Washington, D.C. class will be held at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C., on Thursday, September 8, 2011 between the hours of 2:00 PM and 4:00 PM.

Passing of Pearl Gordon

It is with great sadness that CITBA announces the passing of Pearl Gordon, mother of the Hon. Leo M. Gordon, on Friday, Febuary 18, 2011. Mrs. Gordon's funeral was held on Tuesday, February 22, at the Menorah Chapels at Millburn, 2950 Vauxhall Road, Vauxhall, NJ.

Charlotte's Web Studios (CWS) is offering a 20% discount off all quoted prices to current CITBA members for any CWS design or development project. CWS design and development projects include: web design/development, graphic/print design and layout (including brochures, flyers, business cards), advertising design and layout, search engine and social media optimization, web maintenance, trade show display design and large format print design, CD/DVD design and development, and copyright and editing. The discount applies when someone identifies his/herself as a CITBA member. More information on CWS services can be found at: http://www.charlotteswebstudios.com/.

Feature Articles

U.S. CBP Issues Ruling on NAFTA Average Inventory Management System

By Teresa M. Polino and Orisia K. Gammell*

In the last CITBA Quarterly Newsletter, Lawrence M. Friedman reported on a decision by the Canadian International Trade Tribunal ("Tribunal") regarding an exporter's use of the average inventory management system ("IMS") under the NAFTA. *See* Lawrence M. Friedman, *Canadian International Trade Tribunal Weighs in on NAFTA Inventory Management*, CITBA Quarterly Newsletter, October 2010, at 5. In the case discussed by Mr. Friedman, *Tara Materials, Inc. v. Persident of the Canada Border Services Agency*, Appeal No. AP-2009-016 (Aug. 3, 2010), the exporter, Tara Materials, determined that 72% of its production resulted in goods that were NAFTA originating and 28% non-originating pursuant to Schedule X (Inventory Management Methods) of the Uniform NAFTA Rules of Origin Regulations, which have been implemented by both the United States and Canada. With regards to allocation of the originating and non-originating goods, the exporter desired to apply the "originating" status to his shipments to Canada, presumably not to exceed 72% of his production. The Canada Border Services Agency ("CBSA") argued, and the Tribunal agreed, that the average IMS methodology should be applied to each shipment to Canada for purposes of determining the amount of the shipment that could be entered as originating vs. non-originating.

On August 3, 2010, U.S. Customs and Border Protection ("CBP") issued a long-awaited ruling to EnCana Marketing (USA) Inc. ("EMUS") concerning the use of the average IMS to ascertain the NAFTA eligibility of certain crude oil produced and supplied to it by its related company, EnCana Oil and Gas Partnership ("EnCana").[1] This ruling, HQ H012415, provides important guidance to U.S. importers and foreign exporters regarding the application of the average IMS to the oil industry. Of particular note is that CBP held very differently from the Tribunal with regard to the manner in which an exporter can designate shipments as originating vs. non-originating when relying on the average IMS.

I. Background

On May 29, 2007, EMUS submitted a ruling request to CBP wherein EMUS was seeking approval of an IMS pursuant to the NAFTA to track the use of non-originating offshore condensate as a diluent of bitumen.[2] The NAFTA allows an IMS to be used when fungible originating and non-originating materials are being commingled in the storage and production process. However, the inquiry as to whether a material is "fungible" or

"commercially interchangeable" is fact specific and such determinations are made on a case-by-case basis. Out of an abundance of caution and to avoid rendering non-originating the crude oil supply of many of its customers, EMUS sought approval of its IMS from CBP.

After numerous document productions, meetings and discussions between CBP and EMUS, CBP issued HQ H012415.

II. A Summary of the EnCana Ruling

In validating the use of an IMS to track and allocate diluent, CBP made three separate but significant determinations in the ruling. Taken together, these determinations enabled EnCana to avoid the result that all of its production that used both originating and non-originating diluent would be rendered non-originating. Specifically, the ruling determined that the various diluents used in the production of the crude oil were fungible, and thus EnCana could use an IMS to track the originating and non-originating diluent. The ruling also allows EnCana to allocate the resulting originating and non-originating batches of crude oil in a manner other than by applying the average IMS calculations to each shipment. Finally, the ruling confirmed that the commingling within a storage tank or pipeline of one person's non-originating diluent with originating diluent owned by someone else would not affect the NAFTA eligibility status of the diluent, and that the same was true for crude oil. Individually, each of CBP's conclusions were as follows:

A. Fungibility

After review of documentation and laboratory analysis of the condensates, CBP concluded that "the originating Canadian diluent/condensate and non-originating diluent/condensates used by EnCana are interchangeable for commercial purposes and the properties are essentially identical with regard to their usage as diluent blended with bitumen in the Enbridge pipeline."

CBP's conclusion was based upon two key factors. First, CBP found that the foreign condensate is "fully within the pipeline standards and is capable of transporting the bitumen to its intended destination." In that regard, CBP noted that buyers in the industry submitted letters stating that they consider originating and non-originating condensate to be commercially interchangeable. Additionally, CBP suggested that the differences in density between the Canadian and foreign condensates are small, which permitted both condensates to fall within pipeline standards. Second, CBP considered the "specific role and purpose for which the condensate/diluent is used" as well as the "density, viscosity and the sulfur content" of the condensates. Based on an analysis of these elements, CBP concluded that the properties of the originating and non-originating condensates "are essentially identical with regard to their usage as diluent blended with bitumen." Based on the foregoing, CBP held that the non-originating condensate "may be considered a fungible material for the purposes of NAFTA Inventory Management."

B. Inventory Management System

After concluding that the originating and non-originating condensates are commercially interchangeable, and therefore fungible, CBP held that EnCana's proposed average method IMS "is an acceptable method to determine whether condensate is originating for purposes

of the NAFTA, provided that sufficient records are maintained to support the calculations and origin determinations." The approved average method IMS is based on a ratio over a three month period. It enables EnCana to constructively segregate foreign and originating condensate to calculate the dutiable and non-dutiable shipments of imported crude oil that is produced from the commingled originating and non-originating condensate.

However, in contrast to the decision by the Tribunal, CBP did not require that EnCana apply the averaging methodology to each shipment of finished goods such that each shipment would be partially originating and partially non-originating. Instead, CBP accepted EnCana's proposal to identify each of its shipments (i.e., its batches of oil) as either all originating or all non-originating in such a manner that the total volumes so designated would match the volumes determined to be originating and non-originating during the relevant period of production.

As noted in the CBP ruling, based on this identification of originating and non-originating batches through the use of the IMS, EnCana allocates all non-originating batches of crude oil to its related importer, EMUS. EMUS enters such batches into the United States and pays duty as appropriate. The remaining batches (i.e., those determined to be originating) are allocated for sale either to customers in Canada or to EMUS in the United States. This allocation method permits EnCana to issue NAFTA certificates of origin to third parties who purchase crude from EnCana with confidence that the batches covered by those certificates are originating pursuant to the IMS.

EnCana supported its request for the use of such allocation method based on the fact that such method was a reasonable option, which 1) would serve to provide the U.S. government the maximum amount of duty collection; and 2) was least burdensome for the oil industry as a whole because only EnCana, who used the non-NAFTA diluent, would be required to maintain an IMS. EnCana's Canadian customers, who might either use the resulting crude oil in Canada or ship the oil to the United States, would not have to implement an IMS simply because they purchased product that was partially originating and partially non-originating. In addition, this allocation methodology placed no greater administrative burden on CBP with regards to its role in ensuring that goods claiming NAFTA qualify for NAFTA.

C. Title Separation

Finally, CBP authorized the use of "title separation" in implementing the IMS. In reaching this decision, CBP relied in part on the rationale and decision in *Marathon Oil v. U.S.,* 93 F. Supp. 2d. 1277 (CIT 2000), which held that a claimant need not receive the actual molecules of petroleum product it placed into a common storage tank for purposes of duty drawback. The rationale employed by the Court of International Trade ("CIT") focused on the legislative history evidencing Congress' understanding of the business efficiency of using common storage facilities, and the need for the law to conform to reality. Applying this rationale, CBP stated that it does not "believe that use of a shared storage facility should render what are otherwise originating materials and goods non-originating." As a result, CBP found that "EnCana's use of non-originating condensate in the pipeline does not affect the NAFTA eligibility of other products or materials that are originating that share the same pipeline or storage tanks." In other

words, EnCana's movement of non-originating condensate or heavy crude oil in pipelines or storage in common tanks will not affect the NAFTA eligibility of originating materials or products that share the same pipeline or storage tanks.

III. Conclusion

The EnCana ruling validates the use of an average method IMS to track and allocate originating and non-originating condensate in the production of crude oil for purposes of determining how much of the production is NAFTA originating and how much is non-NAFTA originating. It also confirms that mere storage in common storage tanks, or movement in common pipelines, of non-originating condensate or batches of crude oil will not affect the NAFTA eligibility status of other condensates or crude oil contained within the same storage tanks or pipelines. Also, it is important to note that, contrary to the framework established by the Tribunal in its *Tara Materials* decision, the EnCana ruling does not require the application of the averaging methodology to each shipment of finished goods or product. However, whether or not CBP would permit the allocation method argued for by Tara Materials is a question still unanswered.

[1] In November 2009, EnCana Corporation, the parent of EMUS and EnCana, split into two energy companies: Cenovus Energy, Inc. and Encana Corporation, a pure play natural gas company. Cenovus Energy, Inc., the successor to EnCana with regard to the majority of the petroleum operations, retained the majority of the petroleum oil production along with access to all records pertaining to such production facilities for both past and current productions. For ease in reading, this article has continued to refer to the exporter and importer as EnCana and EMUS.

[2] Although it may be true that for tariff classification purposes, not all diluents are condensates, for purposes of this article, those words are used interchangeably to denote a light hydrocarbon material used to dilute bitumen so that it will flow in a pipeline.

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HOW TO GET OFF THE FDA'S "RED LIGHT" LIST

By: Peter Quinter and Jennifer Diaz*

Background

The U.S. Food and Drug Administration (FDA) is charged with the immense task of protecting consumers' health and safety, and does so by enforcing the Federal Food, Drug, and Cosmetic Act[1] (FD&C Act) among other laws. The FDA regulates human foods,[2] animal feeds, cosmetics, drugs (both human and animal), biologics (including human cells and tissues), medical devices, electronic products that emit radiation and tobacco. For example, the FDA mandates[3] that imported foods (as well as domestic goods) must be pure, wholesome, safe to eat, and produced under sanitary conditions, and must contain informative and truthful labeling in English. It is an importers responsibility to comply with the FDA's strict rules to avoid possible refusal of the products into the United States, product detention, monetary penalties, seizure, or even recall after the importation is completed.

Detention Without Physical Examination – AKA the "Red Light" List

Congress has authorized the FDA to refuse admission of regulated merchandise based on information, other than the results of laboratory examination of samples, which causes an article to appear to violate the FD&C Act. If it "appears"[4] to the FDA that a specific importer is not in compliance with those laws[5], FDA also has authority from Congress to place that importer on a "detention without physical examination" (DWPE) list[6]. This is an extremely low standard for the FDA. Information such as an article's violative history, among other things, may cause an article to appear adulterated, misbranded, or otherwise in violation of the FD&C Act.

This DWPE may also be referred to as a "Red Light" list as goods will automatically be stopped upon entry into the U.S. An example of firms on a "Red Light" list may be found in Import Alert 16-81[7] – DWPE of Seafood Products Due to the Presence of Salmonella. Numerous companies are listed on this Import Alert, from various countries with all different types of seafood. As you will see, it is not just importers that may be placed on this DWPE list, manufacturers, shippers, growers, even geographic areas and countries can all be placed on the DWPE list. The FDA created an Import Alert webpage,[8] which maintains a list of all firms, countries and products on DWPE, and is searchable by country, company, industry[9] or date. It is wise to check this list prior to importing.

For example, if an importer of seafood is on the DWPE list, any merchandise imported by the particular importer will be detained as soon as it is offered for entry into the United States. That importer would be listed on an Import Alert list, similar to Import Alert 16-81 mentioned above. While the merchandise is under automatic detention, the importer is tasked to prove to the FDA that the merchandise does not violate FDA regulations, and should therefore be allowed to enter the U.S. In our example, an importer of seafood subject to DWPE, per Import Alert 16-81, would need a private laboratory report to confirm that there is no salmonella in the seafood.

If the importer does not submit sufficient proof to the FDA that the merchandise is compliant with FDA regulations, the merchandise will be refused entry. If the entry is refused by the FDA, all merchandise must be exported out of the U.S., or destroyed, within 90 days of the date of refusal. The FDA has very specific criteria describing exactly how the exportation or destruction must take place, and if you vary from this process, you may be subject to a liquidated damages claim, up to the amount of your bond, typically $50,000.

As one can imagine, proving your merchandise is compliant each time you import can be a timely and expensive process, but, there is a method to utilize to request removal from the DWPE list. It is a complicated process and knowing the relevant departments within the FDA to communicate with is essential.

How to Get Off the "Red Light" List (or get added to the "Green Light" list)

FDA's Regulatory Procedures Manual[10] provides insight to those who wish to get off the "Red Light" list. The specific method to use to get off the "Red Light" list is directly related to why you were placed on the "Red Light" list in the first place.

For example, if a food product was placed on the automatic detention list because it was deemed "adulterated[11] " or "misbranded[12] " by the FDA, a minimum of five consecutive non-violative commercial shipments must enter the U.S. along with details of what corrective action was performed and/or what steps were taken to prevent future violations. As defined in the FD&C Act the term adulteration has to do with the content of a product (such as the addition of a substance which makes a product inferior, impure, not genuine, etc.) while misbranding includes statements on labels or labeling that are false or misleading. In our example, in order to get off Import Alert 16-81, a firm would have to provide the FDA sufficient evidence that the seafood will no longer be adulterated because very specific processes were changed and microbiological contamination is now under control. This would be presented along with five non-violative shipments that were imported during a reasonable period of time, and in normal commercial quantities. The FDA would not accept five shipments in one day, of twenty cartons each, when a typical shipment would have been one-hundred cartons a month. The FDA would instead treat these five shipments as one shipment. At least one of the five non-violative entries should be audited by the FDA to ensure compliance.

Separately, a Petition must be filed with the FDA requesting that the importer be removed from the automatic detention list. The Petition will be different depending on the initial violation. The process is specific and must include information about the specific products being automatically detained, the entry numbers (and relevant entry information) for (at least) five non violative shipments, corrective actions taken, and any other relevant documentation to detail steps taken to prevent violative merchandise from entering into the U.S. If you follow the procedure correctly, you too, can be added to FDA's beloved "Green Light" List.

*Peter Quinter is a Partner in the Customs & International Trade Department of Becker & Poliakoff and Jennifer Diaz is Senior Associate.

[1]See 21 U.S.C. § 301-399 (2005).

[2]The exception being that FDA does not regulate most meat and poultry.

[3]U.S. FDA laws may be found at Title 21 of the United States Code, and the implementing regulations may be found at Title 21 of the Code of Federal Regulations.

[4]21 U.S.C. § 801(a) of the FD&C Act states, "If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under insanitary conditions . . . or the facilities or controls used for the manufacture, packing, storage, or installation of the device do not conform to the requirements of Section 520(f), or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of Section 505, then such article shall be refused admission."

[5]For example, the "appearance" of a violation may exist when there is a history of importing violative products, when the FDA examines merchandise that has been manufactured, processed, or packed under insanitary conditions, when an article is forbidden or restricted in sale in the country in which it was produced, among other examples.

[6]FDA's Investigations Operations Manual (found at http://www.fda.gov/ICECI/Inspections/IOM/ucm122544.htm#6.7.10) defines DWPE as:

6.7.10 - Detention Without Physical Examination (DWPE)

An action directed against specific products manufactured or shipped by specific foreign firms. "Import Alerts" list products which may be detained without physical examination due to their violative history or

potential.

[7]See http://www.accessdata.fda.gov/cms_ia/importalert_49.html.

[8]See http://www.fda.gov/ForIndustry/ImportProgram/ImportAlerts/default.htm
Industry categories include:
• Biologics, Animal Drug & Feeds, Foods, Color Additives, Conveyances, Cosmetics, Vitamins, Human Drug
See http://www.fda.gov/downloads/ICECI/ComplianceManuals/RegulatoryProceduresManual/UCM074300.pdf.

[9]See 21 U.S.C. § 342 for the definition of "adulterated," or http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterIVFood/ucm107527.htm.

[10]See 21 U.S.C. § 342 for the definition of "misbranded," or http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterIVFood/ucm107530.htm.

[11]See 21 U.S.C. § 342 for the definition of "adulterated," or http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterIVFood/ucm107527.htm.

[12]See 21 U.S.C. § 342 for the definition of "misbranded," or http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterIVFood/ucm107530.htm.

The Hits Keep Coming

Survey of the Major CBP's IP-Related Enforcement Actions in 2010

By: J. F. Chester and Sita Desai*

The U.S. Customs and Border Protection's (CBP) strategic approach to intellectual property rights enforcement is multi-layered and includes seizing counterfeit goods at the border, pushing the border outward through audits of infringing importers and cooperation with our international trading partners, and partnering with industry and other government agencies to enhance these efforts. CBP officers and import specialists are aggressively working together to intercept shipments containing counterfeit and pirated items.

Below are some of the most significant CBP IP counterfeit seizures at U.S. borders for 2010, listed according to the MSRP value of the goods if genuine (Under 19 U.S.C. 1526, a civil penalty of up to the value that the merchandise would have if it were genuine according to the MSRP, could be assessed):

- Los Angeles CBP Seize More than $18 Million in Counterfeit Sunglasses
CBP officials at the Los Angeles/Long Beach seaport seized six shipments of counterfeit sunglasses arriving from China with a combined manufacturer's suggested retail price of more than $18.6 million. CBP officials seized a total of 156,900 pairs of sunglasses in violation of Versace, Louis Vuitton, Dolce Gabbana, Lacoste, Coach, Emporio Armani and Bvlgary trademarks with a total domestic value of $151,564.

- Los Angeles CBP Seize $12 Million in Sham Sunglasses
CBP officers at Los Angeles/Long Beach seized sunglasses valued at the combined manufacturer's suggested retail price of more than $12 million. The sunglasses, in three different shipments coming from China, were confusingly similar to Coach, Gucci and Emporio Armani designer protected trademarks. CBP officers seized a total of 78,600 pairs with the domestic value of$79,920.

- CBP in Savannah Seize $7.1 Million in Counterfeit Handbags, Nike Sneakers
CBP at the Port of Savannah, Ga. intercepted and seized a shipment of counterfeit designer

handbags and Nike sneakers, officials announced. The shipment had a total domestic value of $216,000 and a manufacturers' suggested retail price of $7.1 million. The shipment was selected for examination after CBP officers became suspicious of the documentation that had been submitted for the shipment. Upon physical inspection of the cargo, CBP officers found a total of 5,656 name-brand designer bags bearing the names of Chanel, Coach and Louis Vuitton as well as 4,624 pairs of Nike "Air Max" sneakers.

- Los Angeles CBP Seize $7 Million Worth of DVDs with Counterfeit Trademarks
CBP officials seized 252,968 DVDs with counterfeit trademarks. The manufacturer's suggested retail price of the shipment was estimated to be more than $7.1 million and the domestic value was $204,904. On January 7, CBP officials from Los Angeles/Long Beach seaport complex seized a shipment, which arrived from South Korea. The shipment consisted of movies and music DVDs destined to an importer in the Los Angeles County.

- CBP in Los Angeles, along with ICE and LAPD Seize $6.2 Million in Counterfeit Jeans
CBP officers at the Los Angeles/Long Beach Seaport discovered merchandise that led to a joint operation between U.S. Immigration and Customs Enforcement agents and Los Angeles Police Department detectives, who on Aug. 17, seized counterfeit "True Religion" jeans with a manufacturer's suggested retail value of more than $6.2 million.

- San Diego CBP Seize $1.6 Million in Counterfeit Jeep Toys, Barbie Dolls
CBP officers in San Diego have seized thousands of fake toys worth more than $1.6 million entering the U.S. in commercial shipments. CBP officers discovered and seized 600 Barbie dolls with a domestic value of $2,975 and a MSRP of $23,994. The confiscated dolls were of poor quality and lacked license information. This follows an earlier discovery of 1,920 counterfeit Barbie dolls that were of poor quality and lacked license information. The earlier seizure of dolls had a domestic value of $2,723 and an MSRP of $34,502. CBP officers also recently found battery-operated vehicles designed for children to ride in and operate. The Jeep trademark, which had been recorded with CBP, was found on the counterfeit goods, leading to their seizure. The 3,100 seized Jeep toys have a domestic value of over $554,000 and a MSRP totaling $1,571,964 and the 2,520 counterfeit Barbie dolls have an MSRP of $58,496.

- Chicago CBP Seize More than $1.2 Million in Counterfeit Consumer Electronics
CBP officers at Chicago O'Hare International Airport discovered and seized 25 cartons of counterfeit merchandise earlier this month. The cartons of cell phones, head phones and gaming systems, which infringed on trademarks recorded with CBP and were estimated to have a MSRP value of $1,261,556 and a domestic value of $1,168,829. The shipment originated in China and was destined for Florida. Upon physical inspection, more than 9,400 name-brand consumer electronic items bearing the names of Sony, LG, BlackBerry and Nintendo, to name a few, were discovered.

- San Francisco CBP Seize $1.2 Million in Counterfeit iPhones
CBP officers in San Francisco have seized two thousand counterfeit Apple iPhones worth almost $1.2 million entering the U.S. in commercial shipments. The shipment, from Taiwan, arrived at the San Francisco International Airport.

- CBP in Dallas Seize over $1 Million in Electronics
CBP officers at Dallas/Fort Worth International Airport seized 150 cartons of digital cameras bearing counterfeit SanDisk markings and in a separate instance seized three shipments of RCA stereos with iPod markings. The counterfeit digital cameras, seized Oct. 14, containing the SanDisk markings have an manufacturer's suggested retail value of $291,000. The other three shipments, seized Oct. 19, consisted of 5,040 RCA stereos with the iPod trademark with a suggested retail value of $1,002,960.

Although not a single seizure, some other record-breaking IP-related Customs seizures and penalties in 2010 include:

-CBP in Cincinnati along with ICE Seize over $21 Million in Counterfeit Articles
U.S. "Operation Safe Summer" ran from Sept. 7-17 seizing hundreds of counterfeit items being imported. As a result of the two week special operation conducted by CBP staff at the DHL hub, 611 seizures of intellectual property rights infringing merchandise were initiated. The total manufacturer's suggested retail price of the goods seized during "Operation Safe Summer" was $21,475,735.38.

-IPR Center marks World IP Day by Seizing $263 Million in Counterfeit Goods
More than $44 million was seized in "Operation Spring Cleaning," a massive nationwide joint enforcement operation involving federal, state and local partners of the IPR Center. An additional $219 million was seized this month as part of a long-term ICE investigation with CBP of counterfeit products manufactured in Asia and smuggled through the Port of Baltimore.

- Counterfeiters Convicted in $100+ Million in Counterfeits Case: One of the Largest in U.S. History
Chong Lam and Siu Yung Chan were convicted for their participation in one of the largest counterfeit luxury goods operations in the United States. The total value, in this case, of the corresponding authentic luxury goods manufactured by Burberry, Louis Vuitton, Gucci, Coach, Fendi, Chanel and others is estimated to be over $100 million.

As indicated above, 2010 was another huge year for IP-related Customs enforcement actions. As long as the international production of counterfeit goods remains strong, we will continue to witness significant Customs seizures and penalties.

*J. F. (Jim) Chester is a Sr. Partner in the intellectual property law firm of Klemchuk Kubasta LLP in Dallas, Texas and Sita Desai is an Associate attorney.

On the Move…

Ms. Elizabeth J. Drake was recently named a partner in the law firm of Stewart and Stewart. Prior to joining Stewart and Stewart in 2005, Ms. Drake served as an international policy analyst at the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), where she advocated on behalf of the American labor movement on trade and international economic policies. Ms. Drake received her J.D. from Harvard Law School and her B.A. in Anthropology from the University of California at Berkeley.

Ms. Cortney O. Morgan was recently named a partner in the law firm of Barnes, Richardson & Colburn. Ms. Morgan is the co-chair of the Customs Law Committee of the ABA's Section of International Law. She had been an associate at Barnes Richardson since 2001, after earning her J.D. from The Catholic University's Columbus School of Law and her B.A. from The American University.

CITBA Online –

Please look for further announcements and copies of past newsletters at http://www.citba.org.

Membership

CITBA now allows dues payment through PayPal. PayPal allows members to send money without sharing financial information, with the flexibility to pay for membership using their account balances, bank accounts or credit cards. PayPal is an eBay company and is made up of three leading online payment services. More information about Pay Pal can be found at https://www.paypal.com.

Not a CITBA member? Apply for membership now! CITBA offers different membership levels - active, associate and retired/student. For additional information, check out the CITBA website http://www.citba.org/joinCITBA.php

Are you already a member, but late in paying your dues? Get current today and enjoy the benefits of membership. Contact Page Hall at hall@adduci.com for details.

Pro Bono Opportunities

The U.S. Court of International Trade has an ongoing need for attorneys who are able to serve as pro bono counsel for pro se plaintiffs in Trade Adjustment Assistance cases before the Court. There are two types of Trade Adjustment Assistance cases that call for pro bono representation. The first type arises when workers seek judicial review either after the U.S. Department of Labor's negative determination on the original petition or after the U.S. Department of Labor's negative determination on its reconsideration. The second type of case occurs when the U.S. Department of Agriculture denies a petitioner's claim seeking compensation for a decline in net farm income from one year to the next as a result of imports. The majority of these cases are filed by participants in the Alaska salmon industry and the Gulf Coast shrimp industry.

If you would like to volunteer to serve as pro bono counsel or if you would like more information about the pro bono program, please contact:

Case Management Operations Manager
Scott Warner
(212) 264-2031

You can also learn more about TAA by visiting the CITBA website at http://www.citba.org/announcements.php and reading the Executive Summary of a course first presented at "What You Need to Know About Trade Adjustment Assistance Cases – From All Sides" sponsored by the U.S. Court of International Trade, the American Bar Association, and the Customs and International Trade Bar Association, in April, 2005.

Additional and more detailed information can be obtained at the TAA Coalition web site (http://www.taacoalition.com), which includes a "Primer on TAA petition process," among other informative materials.

Please send questions or comments about this Newsletter to:
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