citba.org
Customs and International Trade Bar Association

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CITBA & Related News

MESSAGE FROM THE PRESIDENT

Have dinner with a judge. Better yet, share a drink and learn that the judge is an avid hiker, fisherman or reader. Having been a member of CITBA for well over two decades, at some point I realized that a real value of the bar association was the ability to associate with the courts. When you are standing at the podium just before starting your argument, a little background knowledge about your audience can be a good thing (or a little scary).

The genius of our past president, Mike O'Rourke, was to recognize that CITBA offers the ability to socialize not only with our peers but with the courts—and to extend that concept to the various government agencies that regulate trade. Many of us may never appear before the Court of International Trade, but will have to deal with CBP or the Commerce Department on a regular basis. Having opened membership in CITBA to government lawyers, we not only grew our ranks but expanded our ability to rub elbows with the decision makers in our field. Last month, for example, I attended an afternoon wine-and-cheese reception for Brad Ward, the new head of the Interagency Trade Enforcement Center. Now armed with some information about the mission of ITEC, I wonder how many of CITBA members at the event will follow-up with a call to Brad concerning a client matter.

Of course, CITBA is not merely a social club. Your bar association is currently drafting an *amicus* brief and comments on the Commerce regulations concerning attorney discipline for misconduct in AD/CVD cases. A major priority continues to be expansion of the jurisdiction of the CIT, and our *ad hoc* committee is fully engaged with the Administration concerning the details of the legislation. This summer's newsletter includes *Claudia Burke's* summary of recent court decisions and excellent feature articles by *Agnieszka Jarmula* explaining the EU's approach to countervailing duties in the context of non-market economy countries, as well as *Amie Ahanchian and Neil S. Helfand* regarding recent regulatory developments governing Foreign Trade Zones.

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Links of interest:

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Bureau of Industry and Security

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International Trade Administration

US International Trade Commission

CITBA is now on LinkedIn!

Join us at

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In the past few years, our membership has passed 400. There are 500 connections to CITBA's LinkedIn© site. Our membership includes attorneys involved in trade policy and export control matters, as well as the aforementioned government attorneys. I aspire to continue adding new members, including government attorneys, and to follow the path Members join through our website and pay dues using PayPal. However, CITBA still relies on volunteers to send out annual dues statements, maintain the membership and mailing lists, keep track of new members and committee assignments, and otherwise handle administration. One of my priorities is to identify a professional services provider to take over administrative tasks.

Suffice it to say that there is a lot going on. I am honored to be elected President and excited by the challenge. I hope that every member will attend an event, contribute to a committee or start a discussion on our blog. If there is an issue that is important to your practice, let us know how CITBA can help you.

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NEW CITBA BOARD OF DIRECTORS

We are pleased to announce the new CITBA Board of Directors:

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UPCOMING PROGRAMS

CIT JUDICIAL CONFERENCE
The Judicial Conference of the Court of International Trade will be held on December 3, 2012. Further details coming soon.

ABA INTERNATIONAL TRADE COMMITTEE
Fall meeting
October 16-20, 2012 in Miami.

NYSBA International Trade Committee
International Section Season Meeting-Lisbon
October 9-13, 2012 in Pestana Palace, Rau Jau, 54, 1300-314 Lisbon.

Annual Meeting 2013
January 21-26, 2013 in the Hilton New York, 1335 Avenue of the Americas New York City.

ANNOUNCEMENTS

NEWS FROM THE CLERK OF THE COURT OF INTERNATIONAL TRADE
By: Tina Potuto Kimble

On April 25th, CITBA sponsored a CLE event for members of the bar to learn what's new at the Court. We covered a number of topics ranging from the Court's new website, new rule amendments, improvements to CM/ECF and best practices. In case you weren't able to join us for this presentation, here are some highlights:

- The Court's website has a new look. All of the content is still there, but in a different location. Please call us if you have trouble finding something.
- The Court adopted over a dozen new rule amendments that became effective on January 1st, including:
  - Rule 26(b)(4)(B) & (C) - Established discovery protections for draft reports, disclosures and communication between a party's attorney and expert witnesses.
  - Rule 73.3(a) - Set a new deadline for the filing of an administrative record in 1581(d), (e), (g), (h) and (i) cases. Administrative records in these cases are now due to be filed simultaneously with the answer.
  - Rule 81 Practice Comment - The list of 17 separate guidelines for citations has been

trimmed to two, published opinions and internet resources. Refer to "The Bluebook: A Uniform System of Citation" for other citation guidelines.

- The Court amended the Schedule of Fees on May 1st. Among the changes in fees were:
  - Attorney Admission Fees, from $50 to $76.
  - Certification of Documents, from $9 to $11.
  - Copies of Audio Recordings, from $26 to $30.
  - Duplicate Certificates of Admission or Good Standing, from $15 to $18.
- Two significant improvements were made to the Court's CM/ECF system, an increase in the file size limit and the implementation of more secure password practices:
  - The file size limit of documents was increased from 5 MB to 10 MB. As in the past, this limit only refers to each part of a filing, not the entire docket entry. For large documents with multiple attachments, each separate attachment can now be up to 10 MB.
  - CM/ECF Users are now able to change their own passwords using the prompt that appears when they first log into the system or by utilizing the Maintain Your Password function available through the Utilities tab on the menu bar. New passwords must have at least 8 characters, with both upper and lower-case letters and include at least one digit or special character, i.e. @, %, $, etc. Logins and passwords remain case-sensitive. The Clerk's Office does not maintain records of users' passwords, but we can tell you the date and time that the password was changed. If you have lost your password, you must submit a CM/ECF Form 09 Notice of Loss and Compromise of CM/ECF Password.

For instruction on CM/ECF beyond the User's Manual, users can attend one of the Court's CM/ECF Workshops. Attendees are eligible to receive 2.0 hours of CLE credit. The next class will be held at the Thurgood Marshall Federal Judicial Building in Washington, D.C. on September 13th.

- To assist the bar in litigating their cases before the Court, the Clerk's Office shared their insights and experiences on several issues regarding best practices:
  - Change in Information - To provide accurate docket sheets and electronic service of case events, attorneys were reminded to promptly notify the Court of any changes in their contact information by both filing the appropriate documents in each of their cases and submitting a Notice of Change in Attorney Information to update their CM/ECF accounts.
  - Form 18 Notice of Termination of Access to Business Proprietary Information - Attorneys in 1581(c) cases are reminded that they have 30 days to file a Form 18.
  - Documents Without a Court Number - Attorneys should always ensure that the proper court number is placed on all of their documents before filing.
  - Notices of Manual Filing - Such notices are not to be filed electronically by attorneys. They will be docketed by the Clerk's Office upon receipt.
  - Motions to Intervene: Separate Docket Entries - Attorneys should make separate docket entries for the motion, Form 11 Notice of Appearance, Form 13 Disclosure of Corporate Affiliations and Financial Interest, Form 17 Business Proprietary Information Certification and any other documents. They should not be filed as one docket entry.

- Motions to Intervene: Proposed Intervenors - When docketing a motion to intervene, attorneys should ensure that they select 'Proposed Plaintiff Intervenor' or 'Proposed Defendant Intervenor' as their party type when adding their party to a case, not 'Plaintiff Intervenor' or 'Defendant Intervenor'.

- Blank Signature Pages on Proposed Orders - When submitting a multi-page proposed order, attorneys should ensure that the signature page contains not only a date and signature line, but also the court number, short title of the case and a page number.

- Certificates of Service - The submission of a Certificate of Service generally is not necessary when filing documents electronically, except for initiating documents.

- Multi-Case Docketing - Attorneys should consider using the Multi-Case Docketing feature of CM/ECF when filing the same document in numerous cases at the same time.

FEDERAL CIRCUIT AND CIT CASE SUMMARIES

By: Claudia Burke*

Federal Circuit Grants Petitions For Rehearing And Remands Constitutional Issue In Countervailing Duty Case.
GPX Int'l Tire Corp. v. United States [Rader, C.J; Linn, *Dyk, JJ*]. On May 9, 2012, the Court of Appeals for the Federal Circuit considered the March 13, 2012 legislation passed in the wake of the court's December 2011 holding that the statute did not permit simultaneous application of the countervailing duty and antidumping duty statutes. The new legislation states that the Department of Commerce shall, in most circumstances, apply the countervailing duty law to nonmarket economies and the authority applies retroactively. The new legislation also provides for an adjustment of antidumping duties to prevent double counting of countervailing and antidumping duties. This provision applies prospectively to proceedings initiated on or after the date of the legislation. The court held that the new legislation overruled the court's December decision. The court remanded to the Court of International Trade the question of whether the legislation creates a special rule applicable only to a small number of cases due to the different effective dates regarding the double counting provision.

Federal Circuit Sustains Application Of Adverse Facts Available In Countervailing Duty Determination On Hot Rolled Steel From India.
Essar Steel Ltd. v. United States [Newman, Lourie, *Moore,* J.J.]. On April 27, 2012, the Federal Circuit affirmed-in-part and reversed-in-part the judgment of the Court of International Trade. The court reversed the CIT's rejection of the Department of Commerce's application of adverse facts available to Essar Steel, an Indian steel producer of subject merchandise in a countervailing duty proceeding. During the administrative proceedings, Essar repeatedly denied that it had a facility in the Chhattisgarh state, an Indian state government that offered countervailable subsidies to manufacturers. After learning that Essar in fact had a facility in Chhattisgarh, Commerce applied adverse facts available and assessed a countervailing duty. The CIT required Commerce to reopen the administrative record to include documents from a later proceeding demonstrating that Essar had applied for, but been denied, subsidy benefits for that facility. The Federal Circuit held that the trade court had exceeded its authority in ordering Commerce to reopen the administrative record to consider evidence that Essar could have, but did not, place upon the administrative record. The court also affirmed the CIT's judgment sustaining Commerce's determination regarding certain subsidy calculations appealed by Essar.

Court of International Trade Dismisses Challenge to Distribution of Payments under Canadian Softwood Lumber Agreement.
Almond Bros. Lumber Co., et al. v. United States, et al., No. 08-0036 [*Eaton, J.*]. On April 19, 2012, the CIT dismissed a complaint objecting to the distribution of $500 million to U.S. lumber producers who withdrew antidumping and countervailing duty suits as part of the 2006 Canadian softwood lumber agreement. Plaintiffs, U.S. lumber producers who did not receive funds, alleged that the distribution term was arbitrary and capricious under the Administrative Procedure Act, violated the Constitution's equal protection clause, and was an improper delegation of a governmental function, based upon the theory that the governing trade statute required a *pro rata* distribution. In 2009, the CIT dismissed the suit for lack of jurisdiction, but in 2011 the Court of Appeals for the Federal Circuit reversed and remanded for consideration of plaintiffs' claims. Upon remand, the CIT rejected plaintiffs' claims under the political question doctrine and for failure to state a claim upon the grounds that the statute does not mandate a *pro rata* distribution and the distribution was within agency discretion.

Court of International Trade Dismisses Constitutional Challenge to Harmonized Tariff Schedule Dismissed.
Rack Room Shoes, et al. v. United States [*Pogue, C.J.*, Restani, J., Barzilay, J.]. This consolidated case combines three complaints serving as test cases for approximately 160 cases that allege that the tariff classification system violates constitutional equal protection guarantees because it prescribes different tariff rates for apparel and footwear products depending upon whether the products are for men, for women, or for children. The CIT dismissed the consolidated complaints, with prejudice, because they failed to allege facts plausibly showing an invidious governmental intent to discriminate. Drawing upon *Totes-Isotoner v. United States*, the court held that disparate treatment in the tariff does not imply intent to discriminate because tariff rates reflect trade policy objectives, protection for domestic markets, and commercial motivations.

Court of International Trade Grants In Part Defendant's Motion To Dismiss For Failure To Include Lesser Penalties In Penalty Notice.
United States v. Nitek Electronics, Inc. [Barzilay, S.J.]. The United States brought an action pursuant to 19 U.S.C. § 1592 seeking recovery of lost duties and penalties based upon negligence and gross negligence. The defendant requested dismissal for lack of jurisdiction and for failure to state a claim. On April 13, 2012, the CIT held it could exercise jurisdiction but held that the Government had failed to exhaust its administrative remedies. When U.S. Customs and Border Protection (Customs) notified the defendant of the duty and penalty action, it stated only that it claimed duties and penalties for gross negligence, and did not specifically state a claim for the lesser-included negligence. The court held that Customs must specifically state a claim for negligence even though the elements are subsumed in the elements for gross negligence.

Court of International Trade Sustains Department of Commerce's Continued Use of "Zeroing" in Antidumping Administrative Reviews.
Union Steel v. United States [*Restani, J.*]. On February 27, 2012, CIT sustained Commerce's continued use of its controversial practice of "zeroing" in antidumping administrative *reviews*. Zeroing has the effect of increasing dumping margins because dumped sales are not offset by non-dumped sales. Because Commerce previously discontinued zeroing in antidumping *investigations* in order to comply with a decision of the World Trade Organization, the Federal Circuit has recently remanded cases for Commerce to explain its interpretation of the statute as permitting zeroing in reviews. In this case, the CIT agreed with Commerce that the methodological differences between how dumping is determined in investigations and in reviews supported Commerce's practice.

*Claudia Burke is an attorney with the Department of Justice, Civil Division, National Courts Section. ***These summaries are not a document of the U.S. Department of Justice, nor does it represent the official views of the Department of Justice.***

Feature Articles

EU's Trade Regulations Treatment of Subsidies in Non-Market Economies

By Agnieszka Jarmula*

The European Union's anti-subsidy rules are contained in Regulation No. 597/2009. Anti-subsidy measures aim to counteract certain subsidies that are deemed to cause injury to the EU industry. EU producers may request the Commission to investigate imports of subsidized products when they consider that their economic performance is impaired by such imports. Under EU law, an actionable subsidy is one which is specific (limited to a particular industry) and which confers a benefit to its recipient. In anti-subsidy investigations, the public authorities of the concerned third country are a party and the investigation must be concluded in 13 months. The European Commission examines whether imports receive actionable subsidies, the EU industry is injured, the injury is caused by the subsidized imports, and the anti-subsidy duties are in overall interest of the EU. If these conditions are met the EU imposes anti-subsidy measures aimed at counteracting the detrimental impact for the EU industry of the subsidized imports.

EU Rules on Non-Market Economies (NMEs)

The EU has no rules for what constitutes an NME and instead relies on a positive list of given countries. There are 15 countries considered to be non-market economies (China, Vietnam, Kazakhstan, Albania, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Mongolia, Belarus, North Korea, Tajikistan, Turkmenistan, and Uzbekistan). China is the most often targeted NME in anti-dumping investigations in the EU and it can be noted that the special system for NMEs is only really significant for China and Vietnam. Thus, the entire system becomes irrelevant if those countries were granted Market Economy Treatment (MET) status.

With regards to MET status in the EU, companies that are granted MET by the EU are treated the same way as if they were situated in a market economy. Companies seeking to be granted MET need to prove that:

1. decisions of firms regarding prices, costs and inputs, including raw materials, cost of technology and labor, output, sales, and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values;

2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;

3. the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to the depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

4. firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms; and

5. exchange rate conversions are carried out at the market rate.

First Case Levying Countervailing Duties Against China in the EU

On May 14, 2011, the EU decided to levy an anti-subsidy tax at 4%~12% and antidumping tax at 8%~35.1% on coated paper imported from China. Although there is nothing in the EU laws prohibiting the EU from imposing the anti-subsidy duty on a non-market economy such as China, historically this was the first case of anti-subsidy duty imposed together with antidumping duty on China by the EU and a break of tradition of inapplicability of anti-subsidy duties to NMEs.

In addition to the coated paper case, there are currently three more anti-subsidy investigations in the EU pending against China: concerning imports of wires wide area networking (WWAN) modems; bicycles; and organic coated steel products. The subsidies alleged in these cases consist of income tax programmes, indirect tax and import tariff programs, preferential lending schemes, grant programs, government provision of services for less than adequate numeration, equity programs, the purchasing of goods by the government above market prices, and preferential tax rates for foreign invested enterprises. In all these cases it was alleged that these schemes are subsidies since they involve a financial contribution from the government of China and confer benefit to the recipients. They are also alleged to be contingent upon the use of domestic over imported goods and/or limited to certain enterprises or groups of enterprises and/or products and/or regions, and therefore specific and countervailable.

Double Remedy Problem

The coated paper case is certainly problematic in that it may cause retaliation on the part of the Chinese government. For example, China has already imposed a tariff on a potato starch from the EU and there are other potential sectors in the EU which China could target with retaliatory measures. There is also another problem facing the EU in this case, which is the issue of "double counting" and possible difficulties in the future that may arise with the methodology used while applying the anti-subsidy duties on China.

The Government of China (GOC) in this case argued that the proposal for countervailing measures amounts to a double remedy. It was submitted that under the EU practice in antidumping investigations against China, normal value is determined by reference to data obtained from producers in a third market-economy country. Thus, in such cases countervailing duties would provide a double remedy to address the same matter since the anti-dumping duties effectively ‘offset’ any subsidy allegedly granted to Chinese companies.

Chinese producers further claimed that if the normal value is based on domestic sales in the analogue country, the rejection of the MET claim and the use of non-subsidised normal value have the effect of increasing the duty by the amount of subsidization and the subsidies would be counted twice.

GOC also maintained that the practice of the Commission is in violation of EU and WTO law and that the Commission should either terminate the CVD proceedings or grant MET to the co-operating exporting producers in the parallel anti-dumping proceedings. Finally, the GOC argued that on the basis of the findings of the WTO Appellate Body on the US – PRC dispute DS379 (1), with respect to double remedy, the current proceedings should be terminated.

The European Council's Implementing Regulation explained how in this case the double remedy is avoided and stated the following:

> Whether or not the simultaneous imposition of anti-dumping and countervailing duties in the case of a non-market economy can lead to a potential ‘double remedy’, could only occur where there is a cumulation of the dumping margin and the amount of subsidy; i.e. where the combined level of two types of duty exceeds the higher of the dumping margin

or the amount of subsidy. This is not the case here.

The EU argued that it is applying the lesser duty rule when imposing anti-dumping and countervailing duties on the same product. In other words, in EU investigations the Commission establishes the level of dumping, subsidization and injury caused to the Union industry. The level of duties can never be higher than the injury margin and the injury margin here is the same for both proceedings. In the parallel antidumping proceedings the Commission established a margin of dumping that is much higher than the injury margin. In line with the lesser duty rule the Commission proposed the imposition of measures that are based on the injury margin. Thus the subsidy margin found in the current anti-subsidy investigation will not provide any additional protection to the Union industry as compared to the dumping margin because the anti-dumping duty will already be capped by the injury margin. Therefore, there is no overlap or cumulation of duties in the two parallel proceedings and consequently, even assuming that there is a potential for a double remedy, there can be no requirement by law to 'offset' dumping against the subsidy. Indeed, the difference between the dumping and injury margins found in the anti-dumping proceedings was much higher than the amount of subsidization found in the anti-subsidy investigation. It should be also highlighted that when it comes to the actual composition of the duties to be paid the Commission has a practice to first impose the duty amount resulting from the CVD investigation. If there is still a gap between the aforementioned duty level and the injury margin, this gap can be filled with the duty resulting from the anti-dumping investigation. However, this does not mean that there is double counting because the combined level of duties could already have been justified as a result of the anti-dumping investigation alone.

It remains to be seen however whether the EU lesser duty rule and the methodology used in the countervailing duty cases will remain compatible with the EU's WTO obligations particularly in light of the findings of the WTO US-China CVD panel and Appellate Body (DS379).

EU Modernization of Trade Defense Instruments and Changes in Trade Enforcement Practice

There are several upcoming changes in the EU system of trade enforcement and trade defense mechanisms. The Council and Parliament are currently discussing several legislative proposals made by the Commission to amend the EU's trade enforcement mechanisms. These changes will be both changes in the decision making process and procedural changes. There is also a proposal that changes how the EU will treat exporting producers in non-market economy countries. Under the new rules, the Commission will be required to calculate an individual anti-dumping duty for exporting producers in non-market economy countries unless it can show that the exporting producer operates as a single entity with the state. The Commission also launched public consultation on the modernization of EU trade defence instruments in April of 2012 which is expected to end in the fall of 2012. These changes together with an increased willingness of EU courts and the WTO to rule against the EU may lead to a different regulatory landscape in the EU.

*Agnieszka Jarmula is a Senior Advisor, Food Safety, Health and Consumer Affairs, at the Delegation of the European Union to the United States.

Recent Regulatory Developments Facilitate FTZ Operations

By Amie Ahanchian and Neil S. Helfand*

With more than 500 Foreign-Trade Zones (FTZ) and subzones currently in operation, employing nearly 330,000 U.S. workers and responsible for the export of approximately $30 billion a year in merchandise, FTZs are an integral part of a growing U.S. economy. They enhance our manufacturers' competitiveness, thereby helping to maintain business activity in the United States, and they create jobs in the communities where they are located. However, with an aging regulatory scheme that included, for example, applications requiring up to 12 months prior to approval, realizing the many benefits of an FTZ was not always an altogether simple process.

For the first time in over 20 years, the Foreign-Trade Zones Board (the Board) announced the adoption of new regulations which provide for greater simplification, flexibility, and access for importers seeking to avail themselves of the benefits of utilizing an FTZ. The Board's revisions to the regulations, issued pursuant to the FTZ Act of 1934, went into effect on April 30, 2012. Broad in scope, the new rules will impact operators and importers alike by streamlining all aspects of the process, with great emphasis on reducing application times.

FTZ Applications

Prior to the regulatory changes, the time and filing requirements for new FTZ applications limited certain companies from quickly implementing and realizing the program's many savings benefits and even discouraged their use due to high start-up costs. In contrast, the new changes alleviate these problems, provide for timely approval, and should increase the number of new FTZ applications and modifications to existing FTZs.

Regarding more specific details, the FTZ Board has improved upon the subzone application process by providing for a simplified application questionnaire with fewer requirements. For example, applicants are no longer required to provide legal descriptions of the property (metes and bounds or property ID number) with their applications. Importantly, the process calls for a reduced timeframe for the approval of most applications to 5 months (3 months for applications subject to an overall zone activation limit subject to §400.36(f)), which is an improvement over a previous average of 10 months – a 50 percent reduction in time.

This shorter processing time allows companies to quickly implement a subzone and attain the program's benefits afforded to companies conducting general FTZ distribution activity.

The new regulations also help to differentiate between FTZs for use by companies that do not intend to conduct manufacturing activities onsite and those that do, the latter cases requiring FTZ Board consideration and approval.

In their entirety, the changes simplify many of the Board's procedures, including those for users to obtain authority related to manufacturing and value-added activity, and they include new rules designed to address compliance with the requirement for a Grantee to provide uniform treatment for the zone users.

Production Notification Approval and Definition

While the new regulations still require advance approval for onsite manufacturing, known as Production Notification, these procedures have also been simplified and streamlined, once again resulting in greater efficiency and reduced timeframes for approval.

Applications for Production Notification require information relevant to the inputs, outputs, and

value of the specific production which will occur in the zone. However, the information previously needed pertaining to production capacity, employment within the zone, and market competition is no longer required, resulting in a more concise and efficient application process. Moreover, the timeline for the FTZ Board to make a decision on whether further review is needed for all or part of the activity that is the subject of the notification is now just 120 days from the submission of a complete notification, which is a significant reduction from the 12 month review process that existed prior to the new regulations.

A significant change in the new regulations is the revised definition for the term "production," which combines the definitions of the prior terms "manufacturing" (substantial transformation) and "processing" (change in tariff classification) into a single definition and standardized set of procedures. With this updated definition, many companies that may not have previously considered their processing activity in an FTZ as manufacturing activity before, may now need to obtain approval from the FTZ Board if it meets the new, more broad definition of “production”.

Lastly, under the new regulations, the public comment period, where local manufacturers, distributers, and other relevant authorities may voice concerns over the proposed manufacturing activity to take place within the FTZ, has now been shortened from 60 to 40 days.

Alternative Site Framework and Minor Boundary Modifications

In addition to changes pertaining directly to production activity, the new regulations specifically adopt the Alternative Site Framework (ASF) program authorized by the FTZ Board in December 2008. ASF provides FTZ Grantees with flexibility to meet the requests for zone status by utilizing the minor boundary modification process where previously a subzone or general purpose zone expansion was required.

Minor boundary modifications are intended to provide flexibility for zone Grantees in managing their zone, and their utilization, as opposed to a subzone, will reduce the time and complexity involved in designating FTZ sites for many companies. As a result the increased use of the ASF is expected to result in a decline in the number of expansion applications in favor of a significant number of these much simpler minor boundary modifications. In cases where minor modifications of zones do not require Board action, an applicant shall be notified in writing of the decision within just 30 days of the determination that the application or request can be processed, and therefore this option constitutes the fastest way for a company to implement an FTZ.

In their entirety, the recently implemented regulations streamline the application process, provide more flexibility with regard to which type of zone will best suit the needs of a company, and provide for significantly faster approvals. Give the significant benefits of reduced and/or deferred duties, Merchandise Processing Fees and customs broker fees, these changes constitute significant revisions to the FTZ program for companies seeking to avail themselves of the many benefits of setting up an FTZ.

*Amie Ahanchian is the Tax Managing Director at KPMG in Washington, D.C.; Neil S. Helfand is a Manager for Trade and Customs at KPMG in San Francisco.

2012 Primer on the Trade Adjustment Assistance Act

Prepared by the CITBA Ad Hoc Subcommittee on TAA Members:
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CITBA has prepared a new 2012 Primer on Trade Adjustment Assistance Cases to assist attorneys who volunteered to represent claimants under the Trade Adjustment Assistance (TAA) Act in the United States Court of International Trade (CIT). This Primer replaces the previous 2005 Primer and is current as of the Trade Adjustment Assistance (TAA) Extension Act of 2011.

This Primer provides an overview of the TAA, reviews the filing procedures for petitioners, and discusses some of the recent cases that have reached the CIT. The cases involve the following issues: inadequate investigations, the definition of an article, like or directly competitive products, causation, statute of limitations, and attorneys' fees under the Equal Access to Justice Act. This Primer deals only with petitions filed with Labor for the TAA for Workers program, according to the Trade Act of 2002, the Globalization Adjustment Assistance Act of 2009, and Trade Adjustment Assistance Extension Act of 2011. This document is meant for discussion/basic introduction purposes only and should not be cited. It is part of an ongoing project by CITBA and its Ad Hoc Subcommittee on Trade Adjustment Assistance (TAA) to improve the handling of TAA cases by attorneys, the government and the courts.

The primer can be found at http://www.citba.org/TAA.php

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Please send questions or comments about this Newsletter to:
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