citba.org
Customs and International Trade Bar Association

Quarterly Newsletter
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CITBA & Related News

UPCOMING PROGRAMS

CITBA Spring Meeting
APRIL 25, 2012

On April 25, 2012, CITBA will hold its annual Spring Meeting. Information regarding this event and the CLE program will be forthcoming.

Breakfast Briefing - Recent Developments Regarding President Obama's Export Control Reform Initiative
May 16, 2012

On May 16, 2012, a breakfast briefing from 8:30-9:30am featuring Eric L. Hirschhorn, Under Secretary of Commerce for Industry & Security, will be held at Sidley Austin LLP,1501 K Street, N.W., Washington, D.C. 20005. Breakfast will be available starting at 8:15am. The cost of this event is:
CITBA Members: $10
Non-Members: $15
Government employees, students: $5
RSVP by May 9, 2012 to Brenda Jacobs at bjacobs@Sidley.com.

U.S. Court of Appeals for the Federal Circuit- Judicial Conference
MAY 17, 2012

The Judicial Conference of the Court of Appeals for the Federal Circuit will be held on Thursday, May 17, 2012 and will be held at The Grand Hyatt, 1000 H Street, N.W.

ANNOUNCEMENTS

News from the Clerk of the Court of International Trade
By: Tina Potuto Kimble

Mr. Mario Toscano has been selected as Chief Deputy Clerk for the United States Court of International Trade. He has replaced Mr. Edward Volpe who retired from the Court. You may already know Mario from his previous position at the Court as the Supervisor of our Case Management Section or, from his participation in the Rules Advisory Committee meetings.

Mario brings many years of federal court management experience to the position and you can rely on him for any assistance you may need. He can be reached by telephone at (212) 264-2826 or, by email, Mario_Toscano@cit.uscourts.gov.

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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Past CITBA Events

CITBA Meeting, Luncheon, CLE, and Reception with the Judges of the CIT and CAFC in D.C.

Feature Articles

The *GPX* Decision

By Jordan C. Kahn*

In March 2012, Congress and President Obama approved legislation to overturn a December 2011 decision by the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). *GPX International Tire Corp. v. United States,* held that the U.S. Department of Commerce ("Commerce") cannot impose countervailing duties ("CVD") on imports from the People's Republic of China ("China") because that country is a designated non-market economy ("NME"). Commerce had intended to redress the harm to U.S. industry from Chinese subsidization of imports that President Obama emphasized in his 2012 State of the Union address.[1] *GPX* frustrated this important purpose by holding that – despite the absence of an express statutory prohibition – Commerce cannot update its CVD policy to address the threat posed by present-day NMEs that contain market components.

When the Federal Circuit's *GPX* holding reversed the Court of International Trade ("CIT"), the United States also became unable to exercise its rights under the World Trade Organization ("WTO") to employ available trade remedies. The legislation passed in response clarifies that Commerce can impose CVDs on imports from NMEs and applies retroactively to avoid the improper revocation of CVD orders and investigations covering NMEs.

The Federal Circuit Decision

A. The GPX Holding

The Federal Circuit's decision in *GPX* built upon its 1986 opinion in *Georgetown Steel Corp. v. United States*. In 1984, under the existing CVD statute, Commerce declined to impose CVDs on imports from Soviet-era NMEs. In *Georegtown Steel*, "The agency reasoned that the concept of subsidies, and the misallocation of resources that resulted from subsidization, had no meaning in an economy that had no markets and in which activity was controlled according to central plans." The case involved potash exported from the Soviet Union and East Germany, countries that Commerce designated as NMEs. Commerce argued that the agency could only assess antidumping duties ("AD") on these imports and not also CVDs. Although Commerce was affirmed, *Georgetown Steel* did not accept the agency's absolute position that CVD law could never apply because "by definition, subsidies do not exist in NMEs." Rather, citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, the Federal Circuit in 1986 found that Commerce's decision not to apply CVD law to NMEs was reasonable.

Commerce in 2007 for the first time found that CVDs could be imposed on imports from a country that the agency designated as an NME. In investigating Chinese free coated paper, it "determined that while China 'remains an NME for purposes of the U.S. antidumping law,' it was 'significantly different from the Soviet-style economies at issue in *Georgetown Steel*,' and that these differences enabled Commerce to calculate whether the government subsidized specific goods." *GPX* involved a challenge to this new policy by Chinese manufacturers of pneumatic off-the-road ("OTR") tires subject to both CVDs and ADs beginning in 2008. The CIT initially ruled that Commerce had discretion under the present day CVD statute to impose both CVDs and ADs on imports from NMEs:

> A review of the legislative history since *Georgetown Steel* indicates that the AD and CVD statutes do not account for Commerce's new hybrid treatment. . . .
>
> Congressional silence regarding the application of the CVD law to NME countries may indicate that Congress never anticipated that the CVD law would be applied while a country remained designated as an NME country. . . . The court, therefore, cannot say from the statutory language alone that Commerce does not have the authority to impose CVDs on products from an NME-designated country.

The Federal Circuit reversed the CIT on this point. It found that that Congress after *Georgetown Steel* "legislatively ratified" the then-existing Commerce policy "that government payments cannot be characterized as 'subsidies' in a non-market context, and thus that countervailing duty law does not apply to NME countries." The Federal Circuit concluded that Congress in 1988 and 1994 enacted legislation that, while not directly addressing the issue, tacitly locked Commerce into its policy for Soviet-era NMEs to all countries designated as NMEs by the agency in the future. Relying on the rejection of a proposed legislative modification that would have articulated the potential for CVDs on imports from NMEs, *GPX* concludes that "the legislative history of the 1988 trade laws is persuasive evidence that Congress did not wish to alter existing laws to apply countervailing duties to imports from NMEs." The Federal Circuit next found that the lack of explicit statutory language addressing the precise issue in the 1994 Uruguay Round Agreements Act operated to bind Commerce to its then-existing practice: "There, Congress reenacted most of the countervailing duty law while making changes to conform the trade laws to international agreements. None of these changes substantively affected countervailing duty law as it pertains to this case." Therefore, the Federal Circuit's *GPX* opinion construed Congress's silence in not passing legislation as affirmative evidence of Congressional intent.

B. Applicable Supreme Court Precedent

GPX departed from the administrative law precept that agencies, in the absence of an unambiguous statute, have discretion to reasonably modify existing policies. *Georgetown Steel* stands for the proposition that in 1984 Commerce properly exercised discretion under the existing CVD statute by only imposing ADs on imports from NMEs. In determining that Commerce acted reasonably, the Federal Circuit noted the lack of indicia "that Congress intended or understood that the countervailing duty law also would apply." Consistent with *Georgetown Steel*, Commerce in 2007 similarly exercised discretion with respect to the CVD law. Likely, the questions for the Federal Circuit in *GPX* should have been – as in *Georgetown Steel* decades earlier – whether: (1) the CVD statute speaks directly to the NME issue; and, if not, (2) whether Commerce acted reasonably. *GPX* ignores this fundamental *Chevron* framework by using Congressional silence on the issue to end the inquiry without having to examine the reasonableness of Commerce's revised policy.

According to the Federal Circuit, Congress in 1988 and 1994 "ratified our *Georgetown Steel* decision and Commerce's existing practice." However, this conclusion should only mean that Commerce going forward had discretion under the CVD statute (the *Georgetown Steel* holding) and appropriately refused to impose such duties on imports from Soviet-era NMEs (Commerce's existing practice). As *GPX* acknowledges through its reliance on legislative history, no iteration of the CVD statute squarely addressed the issue of whether Commerce could apply such duties on imports from NMEs.

The Federal Circuit's "legislative ratification" analysis used an unsuccessful attempt to overturn a Commerce policy that addresses one type of NME to preclude the agency from exercising its discretion to address a different type of NME years later. The CVD statute does not now; expressly prohibit the application of such duties to all countries that Commerce deemed NMEs. Thus, the CIT had correctly concluded that present-day CVD law is ambiguous on this question. Because the statutory language does not resolve the issue, under *Chevron* the case should have turned on the reasonableness of the modified agency practice.

That Commerce changed its policy from the one affirmed in *Georgetown Steel* does not lessen the agency discretion afforded under an ambiguous statute. Indeed, the Supreme Court articulated this very point in its 2005 decision, *National Cable & Telecommunications Assn. v. Brand X Internet Services*. The appellate court had found that its prior upholding of one agency interpretation operated to constrict future modifications, but was reversed as follows:

> allowing a judicial precedent to foreclose an agency from interpreting an ambiguous statute, as the Court of Appeals assumed it could, would allow a court's interpretation to override an agency's. *Chevron*'s premise is that it is for agencies, not courts, to fill statutory gaps. . . . The better rule is to hold judicial interpretations contained in precedents to the same demanding *Chevron* step one standard that applies if the court is reviewing the agency's construction on a blank slate: Only a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction.

This administrative law tenet was re-affirmed in 2009 when the Supreme Court reversed the Federal Circuit and upheld an underlying Commerce determination. *United States v. Eurodif S.A.* explains that a reasonable agency interpretation under an ambiguous statute will be upheld "even after a change in regulatory treatment, which 'is not a basis for declining to analyze the agency's interpretation under the Chevron framework. . . '[T]he whole point of Chevron is to leave the discretion provided by the ambiguities of a statute with the implementing agency.'" The CIT properly relied upon *Eurodif, Brand X*, and *Georgetown Steel* to uphold the application of CVDs to Chinese imports. These cases make clear that Commerce has flexibility – within reason – to update its CVD policy given the ambiguous statute. *Georgetown Steel* and subsequent legislation did not foreclose Commerce's ability to apply CVD law to NMEs; there remained a statutory "gap for the agency to fill."

The Federal Circuit erred by failing to evaluate whether the revised Commerce policy was reasonable. Under *Chevron*, *Brand X*, and *Eurodif*, agencies can modify policies in areas not addressed by Congress. Agencies have discretion because they are technical experts charged with implementing statutes. Without an express prohibition, Commerce should have been able to defend its 2007 change of course as a reasonable means of addressing an entirely new species of NME unlike the Soviet economies that gave rise to the policy affirmed in *Georgetown Steel*. China today is in many respects an NME but without doubt contains market elements absent from its bygone counterparts from behind the Iron Curtain. The position that Chinese subsidies can now be sufficiently measured such that CVDs are warranted should have been reviewed for reasonableness. Instead, the Federal Circuit read

too much into legislative history given the statutory silence on the NME issue. In so doing, the Federal Circuit improperly deprived Commerce of the agency discretion afforded to revisit policies necessitated by modern day realities. Fortunately, the Federal Circuit's disregard of administrative law precedent and sound methodologies of establishing Congressional intent resulted in broad bipartisan support for overriding the *GPX* decision.

GPX PROHIBITED TRADE REMEDIES FOUND PERMISSIBLE BY THE WTO

A. *The CIT and WTO Holdings*

The CIT held that Commerce unreasonably applied both CVDs and ADs to Chinese OTR tires. In the investigation, Commerce had simultaneously imposed CVDs and ADs on Chinese OTR tires without considering the possibility of "double-counting" remedies. The AD statute has special rules for calculating duties for imports from NMEs that employ a surrogate market to arrive at the normal value for comparison with export price in order to assess the amount of duties. Because these surrogate values do not contain the subsidization countered by CVDs, Chinese parties alleged that the combination of CVDs and ADs could overstate the necessary offset. The CIT ruled that when applying CVDs and ADs to NMEs, Commerce must avoid such a distorted outcome:

> Commerce reasonably can do all of its remedying through the NME AD statute, as it likely accounts for any competitive advantages the exporter received that are measurable. If Commerce now seeks to impose CVD remedies on the products of NME countries as well, Commerce must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that double counting will occur.

While an appeal to the Federal Circuit was underway, the WTO Appellate Body ("AB") in March 2011 issued a ruling that addressed the same issue. Before the AB, China challenged Commerce actions on several products, including the same OTR tires at issue in *GPX*; "China argue[d] that it is undisputed that the USDOC took no steps to investigate and avoid the imposition of double remedies, notwithstanding its recognition of the possibility of 'double counting.'" The AB first recapped the double-counting concern accepted by the CIT:

> In the dumping margin calculation, investigating authorities compare the product's constructed normal value (not reflecting the amount of any subsidy received by the producer) with the product's actual export price (which, when subsidies have been received by the producer, is presumably lower than it would otherwise have been). The resulting dumping margin is thus based on an asymmetric comparison and is generally higher than would otherwise be the case. . . .
>
> When a countervailing duty is levied against the same imports, the same domestic subsidy is also "counted" in the calculation of the rate of subsidization and, therefore, the resulting countervailing duty offsets the same subsidy a second time. Accordingly, the concurrent imposition of an anti-dumping duty calculated based on an NME methodology, and a countervailing duty may result in a subsidy being offset more than once, that is, in a double remedy.

The AB determined that Commerce improperly failed to address the risk of double-counting. Its conclusion was based on the WTO Subsidies and Countervailing Measures Agreement, the General Agreement on Tariffs and Trade, the Tokyo Round Subsidies Code, and applicable WTO rulings. This AB finding recognizes that the ability to both apply CVDs to Chinese imports and treat China as a NME for AD purposes was a distinct possibility when China acceded to the WTO in 2001. WTO members besides the United States have imposed both CVDs and ADs on Chinese imports despite China's argument that they cannot be simultaneously applied.[2] Neither the WTO nor the CIT found that Commerce had actually double-counted remedies by imposing CVDs and ADs on Chinese OTR tires. Rather, using their respective legal authorities, both found that Commerce was required to address this concern. Therefore, WTO jurisprudence clearly permits Commerce to impose CVDs on an NME as long as the agency addresses the risk of double-counting when concurrently imposing ADs on the same product from the same country.

B. GPX Precluded Commerce From Taking WTO-Consistent Action

In the months leading up to *GPX*, Commerce was able to assess CVDs on NMEs provided there was no double-counting, in a manner consistent with both U.S. law and U.S. WTO obligations. The Federal Circuit decision prohibited the United States from using CVDs to counter the harm caused by Chinese subsidies regardless of whether the United Stated concurrently imposed ADs on the same Chinese products. *GPX* set forth this holding despite the fact that such action had been found permissible by the WTO. Given that the CVD law is potent tool to combat unfair trade practices, it is difficult to believe that Congress intended for the United States not to apply the CVD law to an NME when such application is not inconsistent with U.S. WTO obligations. Thankfully, broad bipartisan support existed to ensure that U.S. trade policy has every legally permissible tool at its disposal to combat unfair trade practices.

CORRECTING *GPX*

Congress in March 2012 passed legislation to overturn *GPX*. Significantly, without such a correction, *GPX* would have likely forced Commerce to revoke the twenty-two CVD orders in place against products from China.[3] *GPX* also would have potentially revoked any CVD order existing for the Socialist Republic of Vietnam ("Vietnam"), [4] another country designated by Commerce as an NME, as well as terminate ongoing CVD investigations for products from both. Recent investigations include sensitive energy technology in the form of solar cells and wind energy towers.[5] Because Commerce concluded or initiated these processes without a statute precluding the application of CVDs to NMEs, these extensive agency efforts would have been improperly invalidated based on the Federal Circuit's using statutory silence to trump administrative discretion. This lamentable outcome was avoided by the enactment of legislation, as *GPX* suggested. As a result, any need for further action by the Supreme Court or the Federal Circuit has been obviated.

A. Legislation Overturning GPX

GPX concluded by stating that "if Commerce believes that the law should be changed, the appropriate approach is to seek legislative change." The urgent need to correct *GPX* was evident in that the United States became prohibited from using CVDs to counter harm caused by Chinese subsidization despite such action being found permissible under its

international obligations. Fortunately, Congress rectified this absurd result with retrospective legislation clarifying that Commerce remains able to impose CVDs on imports from countries designated as NMEs. Identical bills were: passed unanimously by the Senate on March 6, 2012; passed by the House of Representatives the following day by a vote of 370 to 39;[6] and signed into law by President Obama on March 13, 2012.[7]

This legislation provides that, in general, "the merchandise on which countervailing duties shall be imposed . . . includes a class or kind of merchandise imported, or sold (or likely to be sold) for importation into the United States from a nonmarket economy country." An exception is made for when Commerce "is unable to identify and measure subsidies provided by the government of the non-market economy country . . . because the economy of that country is essentially comprised of a single entity." This exception restores the pre-*GPX* holding of *Georgetown Steel* that Commerce need not assess CVDs on imports from Soviet-era NMEs. The ability of Commerce to impose CVDs on NMEs applies retroactively to "all proceedings initiated . . . on or after November 20, 2006."

The legislation directly addresses the double-counting concern identified by the CIT and WTO with a provision that has prospective application. In the context of simultaneous AD and CVD proceedings, Commerce "shall . . . reduce the antidumping duty by the amount of the increase in the weighted average dumping margin." However, Commerce "may not reduce the antidumping duty" by more than that amount and the reduction only applies only where Commerce "can reasonably estimate the extent to which the countervailable subsidy . . . has increased the weighted average dumping margin for the class or kind of merchandise."

Congress should be praised for acting promptly to overturn the erroneous Federal Circuit decision. The legislation positively preserves existing CVD orders and investigations that took place without an express statutory prohibition on the application of CVDs to NMEs. Its double-counting provision properly requires that CVDs and ADs not be applied to NMEs in a manner that results in over-stating the amounts necessary to counter subsidization and dumping without circumscribing the appropriate methodology. While Congress could have attempted to dictate the circumstances in which CVDs and ADs may be assessed simultaneously, it instead gave Commerce flexibility to develop its methodology and an ability to forego reduction when the CVD benefit cannot be reasonably estimated. This technical matter is best left to agency expertise as opposed to being dictated by statute.

B. <u>There Is No Need For Further Federal Circuit Action Or Certiorari</u>

Were it not for the legislative response, the Supreme Court could have elected to review *GPX*. The chances of obtaining *certiorari* are always slim, particularly when there is no split in the appellate courts – as is always the situation with cases coming from the CIT and Federal Circuit. However, *Eurodif* demonstrates that the Supreme Court will not hesitate to reverse the Federal Circuit and affirm Commerce when insufficient deference is afforded. There Commerce investigated the dumping of low enriched uranium ("LEU") from Europe. At issue was whether Commerce properly determined that LEU acquired under industry-specific separative work unit ("SWU") contracts constituted goods as opposed to services not subject to AD duties. Although the CIT and Federal Circuit rejected this classification, the Supreme Court unanimously reversed. *Eurodif* found "good analytical grounds to show that SWU transactions are reasonably placed within the ambit of sale of goods, and the Department's reliance on them is reinforced by practical

reasons aimed at preserving the effectiveness of antidumping duties."

Trade relations between the United States and China would have provided a compelling basis for Supreme Court intervention. The countries are escalating their use of trade remedies against one another.[8] Because *GPX* lets China subsidize without CVDs (until it achieves market economy status), the decision was properly decried by injured domestic industries as incentivizing unfair behavior.[9] Even if this economic tension was not itself a reason for Supreme Court review, aspects of *GPX* may have been attractive to individual justices. Justice Scalia, a critic of reliance on legislative history, may have been interested in reviewing the use of a proposed legislative modification to preclude agency action despite the lack of an express statutory prohibition. Because Justice Breyer promotes consistency between U.S. and international law, he may have been interested in the discrepancy between *GPX* and the WTO. Although not necessary because of the legislation, the Supreme Court could have granted *certiorari* to reverse the erroneous Federal Circuit holding and reinstate the reasonable Commerce determination that CVDs can be applied to NMEs.

The legislation further obviates the need for the Federal Circuit to reverse *GPX* through rehearing or *en banc* review. The *GPX* panel could have reheard its decision because the failure to follow administrative law set forth in Supreme Court precedent constitutes clear error. Alternatively, the Federal Circuit could have granted *en banc* review. This mechanism provides for panel decisions to be heard by every appellate judge besides those on senior status. Although "disfavored" generally, *en banc* review would have been appropriate for *GPX* because it "involves a question of exceptional importance":[10] the ability of Commerce to counteract Chinese subsidization through the proper exercise of agency discretion.

GPX could have provided an opportunity for the Federal Circuit to employ the *en banc* process in CIT appeals – a practice that would augment the efficacy and integrity of the trade remedy laws. Such reviews are warranted when "necessary to secure or maintain uniformity of the court's decisions."[11] Federal Circuit panels have issued recent trade decisions that seemingly conflict with one another, notably in 2010 decisions reaching opposing conclusions as to when Commerce may apply an adverse facts available ("AFA") rate in calculating ADs for uncooperative respondents.[12] These rulings fail to adequately explain the disparate outcomes and represent a situation where clarification by the Federal Circuit through *en banc* review would improve the administration of the U.S. AD law.

Although CIT appeals comprise a small fraction of the Federal Circuit docket, the role of an appellate court is to generate coherent precedent. Given that the Supreme Court rarely grants *certiorari*, the Federal Circuit must fashion its trade opinions with precision and accuracy. This endeavor is aided by the two newest Federal Circuit jurists, Judges Reyna and Wallach, having extensive international trade experience. A Federal Circuit practice of increased *en banc* review of trade cases would greatly benefit the CIT, Commerce, and all parties participating in global commerce – foreign and domestic alike, despite the fact that such recourse is no longer necessary in *GPX* because of the legislative response.

Conclusion

Congress corrected *GPX* in March 2012 to prevent the unwarranted revocation of CVD orders and ongoing CVD investigations on imports from China and Vietnam. CVDs are designed to level the playing field against unfair subsidies. Although Commerce decades ago believed it could not use CVD law to counteract subsidization by Soviet-era NMEs and

that determination was upheld as reasonable by the Federal Circuit, the agency should have remained able to update its policy for new types of NMEs in the absence of a statutory prohibition. *GPX*'s reach prohibited the United States from using CVDs to counter harmful Chinese subsidies despite being able to do so under its international obligations. The legislation rectified this outcome by directing Commerce to avoid double-counting AD and CVD remedies while giving the agency flexibility in its methodology, thereby obviating the need for corrective action by either the Federal Circuit or the Supreme Court.

***** Jordan C. Kahn is an attorney at Picard Kentz & Rowe LLP.

1. President Barack Obama, State of the Union (Jan. 24, 2012) ("Over a thousand Americans are working today because we stopped a surge in Chinese tires. But we need to do more. . . . It's not fair when foreign manufacturers have a leg up on ours only because they're heavily subsidized.").
2. *See Slaps Anti-Dumping, Countervailing Duties on Chinese Paper,* INTERNATIONAL CENTRE FOR TRADE AND SUSTAINABILITY (May 18, 2011).
3. *See Antidumping and Countervailing Duty Orders in Place as of October 11, 2011*, United States International Trade Commission, *available at* http://usitc.gov/trade_remedy/documents/orders.xls.
4. *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Countervailing Duty Order*, 75 Fed. Reg. 23,670 (May 4, 2010).
5. *See Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 76 Fed. Reg. 70,966 (Nov. 16, 2011); *Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 77 Fed. Reg. 3447 (Jan. 24, 2012).
6. *See Committee to Support U.S. Trade Laws Applauds The Passage of The GPX Bill*, TRADE REFORM (Mar. 6, 2012).
7. *See* Statement by the White House Press Secretary on H.R. 4105 (Mar. 13, 2012).
8. *See* Keith Bradsher, *China Imposes New Tariffs on U.S. Vehicles*, NEW YORK TIMES (Dec. 14, 2011).
9. *See USW Criticizes Court Ruling that Dismisses China's Countervailing Duties*, UNITED STEEL WORKERS (Dec. 27, 2011) ("The sounds of applause coming from Tiananmen Square greeted the court's decision to legalize [China's] cheating.").
10. Federal Rule of Appellate Procedure 35.
11. *Id.*, Rule 35(a)(1).
12. *Compare Gallant Ocean (Thai.) Co. v. United States,* 602 F.3d 1319 (Fed. Cir. 2010) *with KYD Inc. v. United States*, 607 F.3d 760 (Fed. Cir. 2010).

Mexico 2011: Year in Review

NAFTA Origin Verifications by the Mexican Ministry of Treasury Continue to Increase.

By Fernando Holguin*

The continuous increase in the trade of goods and services between Canada, Mexico and the United States in the last years, as a consequence of the implementation of the North American Free Trade Agreement ("NAFTA"), has also resulted in the raise of NAFTA origin verifications by the Mexican Ministry of Treasury ("MMT"), to determine whether goods imported into Mexican territory qualify as NAFTA-originating.

Even though the MMT is allowed to conduct the origin verifications either by written questionnaires or visits, directed in both cases to an exporter or a producer of the United States or Canada, it has focused most of its efforts on verifying the origin of goods by means of written questionnaires, mainly because the visits to premises of exporters and producers outside Mexico entail a higher investment of human and economic resources. The following table reflects this trend:

YEAR	NUMBER OF ORIGIN VERIFICATION QUESTIONNAIRES	NUMBER OF ORIGIN VERIFICATION VISITS
2008	115	25
2009	173	37
2010	318	32
2011	350[1]	35[1]

It is also important to note that the significant majority of the questionnaires and visits conducted by the MMT are directed to exporters and producers from the United States, with special focus on the textile, footwear, electronic and steel industries.

Origin verification questionnaires sent by the MMT to exporters and producers from the United States or Canada, usually conclude in a litigation before the Mexican Tax Courts, due to the comprehensive request for information by the MMT, and also as a result of untimely responses by the exporters of producers.

During the past years, the MMT has developed different models of verification of origin questionnaires; however, most of them require the exporters and producers to deliver a significant amount of documents and information evidencing the origin of the goods subject matter of the verification, which in many cases represent the complete product origin files. Furthermore, this information must be submitted before the MMT within a term of 30 days, and requests for an extension of this term are generally denied.

The MMT sends the origin verification questionnaires by certified mail return receipt requested, however, once they arrive to the U.S., in numerous cases it takes many days for the questionnaire to reach the export department within the headquarters, or an officer with the authority or knowledge to provide the necessary attention to this type of procedures, so between employees underestimating the urgency of the questionnaires which are often accompanied by an official communiqué in a different language, (Spanish), the limited time to find local advice to analyze the case and draft a proper response in Spanish to be submitted before the MMT, and the lack of time to prepare all the requested information, these questionnaires end up being decided in Mexican Tax Courts through litigation with a major focus on the formal aspects and technicalities of the origin verification procedures.

In order to avoid the aforesaid issues, and a possible suit for issuing a defective certificate of origin, it is always advisable for companies to have a knowledgeable officer appointed for the specific purposes of:

i) completing NAFTA analysis for the exported products at least annually, and every time that there is a change on a supplier or any other circumstance that may impact the origin of the goods;
ii) keeping the necessary files to evidence the preferential treatment of the products;
iii) coordinating all the personnel involved in the import/export procedure, both domestically and abroad, if necessary;
iv) providing constant training to people involved in the import/export process and;
v) maintaining awareness among employees that may receive the notification of a Mexican origin verification.

The First Permanent Authorization for International Freight Services was issued by the Mexican Trucking authorities under the framework of NAFTA.

As a result of the decision of the United States to grant motor carriers from Mexico the right to operate beyond the 25-mile border zone, the Mexican trucking authorities granted the first permanent authorization for international freight services ever issued under the framework of NAFTA. The authorization was secured by Stagecoach Cartage and Distribution LP to cross into the whole Mexican Territory.

In 2007, a pilot and temporary program was authorized by Mexican authorities thus allowing a few motor freight companies from the U.S., to conduct operations across the borders. The pilot program was extended for one-year terms until August 2011, when the permanent authorizations were granted.

One of the main concerns of the American Trucking Associations, and in general U.S. companies, has been whether the Mexican Government will provide transparent access for American companies willing

to participate in the Mexican Market. In our experience, the process before the Mexican Ministry of Communications and Transportation, through its Auto-transportation Directorate has been very expeditious, and the collaboration of the aforesaid authority has been instrumental, in accomplishing this milestone achievement.

Perhaps one remaining concerns is that some United States companies have implemented joint venture and/or partnership mechanisms with Mexican trucking companies to have an indirect participation in the Mexican trucking sector. Some of those trucking companies operate under association structures that have not been tested from a regulatory standpoint in Mexico and that thus entail potential risks. Those risks may be accentuated now that a proper vehicle for operating in Mexico exists. The opportunity to operate under the new permanent cross border program allows U.S. trucking companies to develop their own independent freight operating capabilities in Mexico permitting the implementation of a more planned, stable and reliable business strategy.

Modernization of the Customs Compliance System in Mexico

The Mexican Government has launched a new tool known as the Foreign Trade Single Counter, which will allow companies to comply with all its Foreign Trade obligations, by transferring electronic information to a single website. The main purpose o f the Foreign Trade Sole Counter is to simplify, standardize and automate all customs procedures in one.

As a result thereof, the flow of information between private entities and the Government will be significantly more expeditious and simple, and the duration of the customs formalities will be considerably reduced.

In addition to simplifying all the import and export submissions, this Foreign Trade Single Counter shall also serve to comply with non-tariff restrictions, carry out notifications related to the submissions of the company and, to carry out electronic payment of duties and taxes.

In order to complete submissions through the Foreign Trade Single Counter, companies need to use their Mexican Tax ID and their Electronic Advanced Signature. The website of this Foreign Trade Single Counter is www.ventanillaunica.gob.mx

***Fernando Holguín is a Partner at Enríquez, González, Aguirre y Ochoa, S.C. in México (fholguin@egao.com.mx)**

The CIT's Decision in Firstrax, Div. of United Pet Group, Inc. v. United States, No. 07-00097, 2011 WL 5024271 CIT (Oct. 21, 2011).

By LaDawn Burnett*

Overview

On cross motions for summary judgment, the Court of International Trade ("CIT") held for Plaintiff and ruled that the cloth pet crates at issue were properly classified under subheading 6307.90.9889, HTSUS. The court rejected the government's classification under 4202.92.9026 which applies to

> Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters, and similar containers, traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and

> backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper . . . .

Plaintiff's merchandise was not found within Heading 4202 *eo nomine* as alleged by the government.

The government's defense of its classification was via *ejusdem generis,* which requires that any imported merchandise within its scope "possess the same essential characteristics or purposes that united the listed exemplars . . . ." (quoting Avenues in Leather, Inc. v. United States, 317 F.3d 1399, 1402 (Fed. Cir. 2003), citing Sports Graphics, Inc. v. United States, 24 F.3d 1390, 1392 (Fed. Cir. 1994)). The court also stated that the court of appeals had previously held that goods in Heading 4202 shared "the common characteristic or unifying purpose of . . . 'organizing, storing, protecting, and carrying various items.'" (quoting Avenues in Leather, Inc. v. United States, 317 F.3d 1399, 1402 (Fed. Cir. 2003).

The CIT determined that "organization" implies multiple items placed together in a single container, and that the named exemplars in Heading 4202 are specifically designed to organize a number of items (a position with which the plaintiff agreed), the court found that dogs are not capable of "organization" in the way in which toiletries, pairs of socks, or pieces of jewelry are. The court also considered the meaning of the terms "store" and "contain" to determine that plaintiff's argument is persuasive: soft crates do not have the ability to store or contain dogs at the convenience of the owner. In addition, the court found plaintiff's comparison of port-a-crates to playpens for children persuasive, further distinguishing the merchandise in question from the exemplars listed in Heading 4202 which serve to store or contain inanimate objects of personal property.

Furthermore, the court deemed the construction the port-a-crates, which provides insufficient shelter from the elements and inadequate defense from animal claws and fangs, as indicative of its failing the third essential characteristic of Heading 4202 exemplars: protection. Finally, the court found that the crates do not qualify as pet carries because their design and structure make them incapable of conveying dogs which may weigh up to 70 pounds.

Collectively, these reasons appear to support the court's ruling. There are, however, reasons to question whether the right ruling was reached.

Court's Determination on the Term "Contain"

Citing Webster's Third New International Dictionary, the court offers the following definition for "contain":

1: To keep within limits: hold back or hold down: as
   a: RESTRAIN, CONTROL . . . SUPPRESS . . .
   b: CHECK, HALT, WITHSTAND, STEM . . .
   c: to confine (the enemy) to the immediate terrain or to a limited area: prevent (the enemy) from making a breakthrough . . . .

In making the distinction between "store," the court states "'contain' can be to restrain or suppress animated things from acting a certain way." Firstrax, Div. of United Pet Group, Inc. v. United States, No. 07-00097, 2011 WL 5024271, at *8 (CIT, October 21, 2011). The court goes on to cite Pl's Response to Defendant's Motion in which plaintiff stated, "[I]f [a pet] chooses, [it may] chew and tear through the crate at any time . . . . The crate is only meant to act as a home for a dog and is purposefully not made to cage or contain a dog." Indeed, it appears that one intended purpose of the port-a-crate's design is to confine pets. For example, the doors and entry posts have a "zip closure that is designed to be rolled up and secured with a strap to allow the door to remain open if desired." Plaintiff's Separate Statement of Undisputed Facts, 24 (emphasis added).

The use of a zipper – instead of a simpler closure, such as Velcro – indicates intent to leave the determination on whether the dog remains free to leave the port-a-crate to the owner and not the dog. This design component contradicts plaintiff's statement that the port-a crate was intended to house pets "for as long as [the pets] like to be housed." Pl's Response at 16. Incidentally, the online product description for the Firstrax Port-A-Crate E2 Indoor/Outdoor Pet Home states, "[t]he top and front entry doors have zippers and locks, so you can tightly secure your pet and keep it safe." Firstrax Port-A-Crate E2 Indoor/Outdoor Pet Home – 32 Inches by Firstrax, Amazon.com,http://www.amazon.com.

Further, while plaintiff states that the dog may chew and tear through the crate at any time, plaintiff also stated that the soft crates "if properly used . . . are . . . for dogs that have been trained to accept them as their den or home." Thus, a crate-trained dog, for whom the port-a-crate is intended, would not chew or tear through the mesh or nylon fabric because it would have been trained to remain within the crate. Pl's Separate Statement of Undisputed Facts at 86. In fact, plaintiff admitted that the soft crates were designed for "docile" pets. Pl's Response at 18.

Comparison to Baby's Playpen

The court's adoption of plaintiff's comparing the port-a-crate to a baby's playpen indicates that the court overlooked one key difference between plaintiff's merchandise and a playpen – the latter does not have design components which enclose the child on all four sides. While both may be designed with mesh walls and zippers, the top of a playpen remains open such that the child is never sealed within. The port-a-crate, by contrast, gives the owner the option of completely encasing the dog. In addition, playpens are primarily designed to protect the child from outside elements whereas the port-a-crate functions, in part, to protect outside elements and individuals from the dog's unwanted behavior.

Federal Circuit's Determination that "Carrying Various Items" is the Common Characteristic or Unifying Purpose of Exemplar Goods in Heading 4202

A more pressing issue which should be raised in a future case by another party is whether the Federal Circuit's holding that the "carrying of various items" is, in fact, the common characteristic or unifying purpose of the exemplar goods in Heading 4202. While it is true that many of the goods listed such as jewelry boxes, cutlery cases, sports bags, knapsacks, briefcases and trunks, are used to carry a multiple items, that trait is not – in general – common to all the goods listed. For example, spectacle cases, binocular cases, camera cases. . . [and] holsters, are not designed to hold multiple items. Spectacle cases are used to hold one pair of eye ware (i.e.eye glasses or goggles), not multiple pairs. Similarly, binocular cases are made to hold one pair and the same is true of many camera cases, since digital cameras predominate and film is no longer universally used. In addition, holsters, whether for guns or cell phones, are designed to hold that one item. Although this argument was not raised, following this reasoning, the port-a-crate's intended use for one pet, as opposed to for multiple pets, makes it similar to some of the exemplar goods listed in Heading 4202.

In conclusion, Firstrax raises an additional question on whether in a future case before different litigants, the court of appeals should review its position on Heading 4202 regarding the "common characteristic" of the heading's exemplar goods.

* LaDawn Burnett is a law student at Notre Dame Law School.

To Waive or Not To Waive?

Should a Surety Waive its Statute of Limitations Defense When Asked to do So By the U.S. Customs and Border Protection in 1592(d) cases?

By Aykut Ozger*

If you represent an importer or a surety company, more likely than not, you have seen a demand letter

from the U.S. Customs and Border Protection, asking your client to sign a (sometimes) vague piece of paper, waiving its statute of limitations defense for a period of two years.
Depending on the port, or even on the specific paralegal specialist at the same port, these letters come in varieties. Despite the different forms, however, the basic idea of these letters is the same: Customs is about to assess, or is assessing, a penalty case against the importer for various entries made by the importer between specific dates, and because less than one year remains on the running of the statute of limitations, Customs is asking that the importer (and the surety) waive its right to assert this defense for a period of usually two years.

The basis of this defense is found in 19 U.S.C. § 1621. 19 U.S.C. § 1621(1) states that "in the case of an alleged violation of section 1592 …, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation, or if such violation arises out of fraud, within 5 years after the date of discovery of fraud[.]" Although the limitations period is five years, the time the statute starts to run depends on the degree of culpability assessed by Customs for the importer. If Customs alleges that the degree of culpability of the importer is negligence or gross negligence, then the limitations period starts to run from the time the violation occurred; on the other hand, however, if the degree of culpability is fraud, then the limitations period starts to run at the time Customs discovered the fraud, not when the fraud actually happened. This distinction is important as it may cause some problems for the unwary surety.

There is no universal recipe on whether a surety should waive the statute of limitations defense; a surety should look at each request on a case by case basis. When looking at such a request, the surety must consider certain factors in deciding whether to sign such a waiver. Why would signing a waiver even be an issue for a surety or an importer? An answer is found in 19 C.F.R. § 162.78. Under 19 C.F.R. § 162.78(a), Customs can shorten the response period of 30 days for claims to as little as 7 days, if less than one year remains before the statute of limitations may be asserted as a defense. Thus, if a surety has good grounds for a petition, but needs more than seven days to file it, then it would be necessary to waive the statute of limitations defense for another two years.

There are three distinct scenarios sureties will likely face. In all these three scenarios, the hypothetical classification is a complicated one, and the surety will need further information from the importer to be able to come up with a viable defense, if one exists. The only variable in the scenarios is the status of the importer.

Scenario 1:

In this first scenario, the importer is no longer in business. Furthermore, the surety cannot get a hold of any of the former officers of the company. As such, the surety does not have any information on the imported merchandise, except for the information that is found on the commercial invoice and the entry summary. Unless the surety has another defense that is not based on classification, such as deemed liquidation or entries falling outside of the bond terms, there is no need to waive the statute of limitations defense. Because the surety will not have any defense on which to file a petition, gaining time will not do any good for the surety. As such, the statute of limitations is the strongest defense for the surety, and it should not be waived.

An exception to this would be, if the surety can get in touch with the Customs Broker, and if the Customs Broker has good reason, and information, to support the fact that Customs' position is inaccurate, then the surety may wish to waive the statute of limitations defense for another two years to extend the time to file a petition, assuming that the surety will obtain solid information from the broker to make a case against Customs.

Scenario 2:

In this second scenario, the importer is still in business, but does not cooperate. As such, the scenario is like the first one: the surety does not have enough information to file a petition. Thus, the first impression would be to not sign the waiver because if there is no defense for a petition, there is no reason to extend the time to file a petition. Depending on the circumstances, however, this scenario may be more advantageous than the first scenario for the surety. Although the importer may not be cooperating and providing the surety with information, the importer may be trying to fight Customs' case,

and preparing its own petition or disclosure. In that sense, the importer may need more time than a typical 30 day slot to file a petition. The importer may request an extension from Customs. Sometimes, depending on the port, Customs may require that both the surety and the importer waive the statute of limitations defense before they would extend any time for the importer. Now, the importer needs the surety to waive the defense.

If the importer asks you to waive the defense, as surety you have the upper hand and can use the statute of limitations card as leverage. For example, in return of waiving the limitations period for another two years, you can ask the importer to post collateral. Alternatively, you can require the importer to give you all the information necessary for you to prepare a petition. If the importer provides you with full collateral, then you can waive the statute of limitations defense because now you are fully covered for the loss. On the other hand, if the importer gives you the required information, you can now have a basis to file a petition, and as the surety, you will want that extension to file a petition; hence, you may want to waive the statute of limitations for another two years.

Scenario 3:

This is an ideal case where the importer is fully cooperating and giving you all the necessary information. In this case, providing Customs with a statute of limitations waiver will most likely benefit the surety because the surety, by waiving the waiver, can ask Customs for a 30-day extension to file a petition. Note, however, that this Scenario also assumes that the importer has a good defense against Customs' allegations.

You Decided Not to Waive? What Should You Expect?

Not waiving the limitations defense may come with risks. First, if Customs gave you only seven days to respond, and if you need more time, you will not get this extension if you do not sign the waiver. Of course if you do not plan on submitting a petition, this does not apply to you.

Can Customs still come after you as the surety if you fail to sign the waiver but the administrative process has not completed against the importer yet? Case law suggests that this may be the case. See United States v. Aegis Sec. Ins. Co., 29 C.I.T. 1263, 1265 (2005) ("Suits under 19 U.S.C. § 1592(d) for duties may proceed whether or not penalties are assessed"); see also United States v. XL Specialty Ins. Co., 30 C.I.T. 1763 (2006) (Court denied surety's motion to stay pending outcome of the administrative proceedings, where the United States sued the surety for recovery of duties pursuant to 19 U.S.C. § 1592(d)).

A surety that sits back and waits to be sued, hoping to file a motion to stay while administrative proceedings have not yet concluded, may not be successful in its motion, and may end up having to defend the suit against the government, incurring the inevitable expense of litigation. Can the statute of limitations defense save the surety at this point? Hard to tell. When Customs sends out the waiver requests, that request will always be based on the date of the entry. So, when Customs says that less than one year remains for the statute to run, that will be based on the entry date plus five years. However, as the statute makes it clear, for negligence and gross negligence, the five years starts to run at the time of the breach, and for fraud, the statute starts to run from the time of discovery of the fraud, which is more likely to be a later date. Thus, the statute of limitations defense may not save the surety because the statute may not have run yet.

Waiving the limitations defense is not always a bad thing. If the facts are right, then the surety may benefit from such a waiver rather than hurt itself. If the defense is waived, it should be tailored as narrowly as possible.

*Ayku Ozgar may be reached at the Justus Law Firm, PLLC aykut@justuslawfirm.com.

Notable Federal Circuit and CIT Case Summaries

By Claudia Burke*

Federal Circuit Affirms Commerce Review of the Antidumping Order on Frozen Fish Fillets from Vietnam. QVD Food Co., Ltd. v. United States [Bryson, Linn, JJ; Newman, J, dissenting].

On September 12, 2011, the Federal Circuit affirmed a CIT decision that sustained Commerce's final determination in the fourth administrative review of the antidumping order on Frozen Fish Fillets from Vietnam. The court rejected a challenge by a Vietnamese producer who argued that, in determining "normal value" for the purpose of calculating the producer's margin of dumping, Commerce failed to use the best available information to value whole pangas fish and to value certain "general expenses." The Federal Circuit agreed with the CIT that Commerce's decision regarding how to value the whole pangas fish factor was supported by substantial evidence.

Court of International Trade Sustains Commerce's Determination Not to Conduct "Revocation Review" of Vietnamese Shrimp Exporter. Amanda Foods (Vietnam) Ltd., et al. v. United States [Pogue, C.J.].

On December 14, 2011, the CIT sustained Commerce's determination that it could not review a Vietnamese company for possible revocation of its antidumping order concerning shrimp from Vietnam during the third administrative review of the order because the company was not one of the largest producers or exporters selected as mandatory respondents. In doing so, the court determined that: (1) the antidumping statute was ambiguous with respect to revocation; (2) Commerce reasonably interpreted the statute and its regulations concerning revocation; (3) the revocation procedure Commerce had announced in a previous administrative determination was not binding upon the agency; and (4) the plaintiff had failed to exhaust its administrative remedies with respect to its challenge to Commerce's selection of mandatory respondents.

Court of International Trade Sustains Department of Commerce's Determination Not to Use Data Tainted by Subsidies in Administrative Review of Chlorinated Isocyanurates from China. Clearon Corp. v. United States (Ct. Int'l Trade) [Barzilay, Senior J.].

On November 30, 2011, the CIT dismissed a challenge by Clearon, a domestic producer of chlorinated isocyanurates, to Commerce's final results in the administrative review of the anti-dumping duty order of chlorinated isocyanurates from China. The court rejected Clearon's claim that Commerce had improperly excluded certain surrogate company financial statements because the data were tainted by subsidies, holding that substantial evidence supported Commerce's determination. The court additionally refused to consider Clearon's allegation that Commerce had not followed an internal policy, as Clearon failed to raise this argument in the first instance before the agency.

Court of International Trade Denies Application for Mandamus. NSK Corp. v. United States, (Ct. Int'l Trade) [Barzilay, SJ]

On October 12, 2011, CIT denied an application for writ of mandamus to force Commerce to revoke an antidumping duty order with an earlier effective date. When the International Trade Commission (ITC) determines there is injury to the domestic industry of a particular product, and when Commerce determines that the product is being sold at less than fair value in the United

States, Commerce must issue an antidumping duty order covering future entries of the product. If the ITC later issues a negative injury determination, Commerce must revoke the order. In this case, the ITC issued, on remand in a separate case, a negative injury determination for ball bearings from the United Kingdom and Japan. After the court sustained the ITC's remand determination, Commerce revoked the order. Japanese and British bearing companies then requested a writ of mandamus to force Commerce to revoke the order as of the date of the ITC negative determination, rather than after the court's final judgment. The court denied the application, holding that there is no clear statutory or other obligation to revoke as of the date of the negative injury determination. The court also declined to force Commerce to lift the suspension on liquidation of entries of bearings, where suspension is required by long-standing precedent.

*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*

Proposed Changes to the CITBA By-Laws

Dear CITBA Members,

CITBA's Board of Directors have proposed changes to the By-Laws. A vote will be held on the proposed amendments at CITBA's Annual Meeting in New York City on April 25, 2012. The following is a summary of the proposed amendments. The full text will be sent via e-mail to members.

Article I
- Section 1: Changes "Associate" membership class to "Foreign Lawyer" membership class
- Section 2: Extends "Active" membership to members of the CAFC bar and members of the bar of the highest court of any state or DC, plus any federal court
- Section 4: Redefines "Associate" membership as "Foreign Lawyer" membership
- Section 6: Changes reference from "Associate Member" to "Foreign Lawyer Member"
- Section 7: Corrects a typo

Article II
- Section 1: Adds "at large" members to the Board of Directors
- Section 4: Allows "written notice" or "written requests" referenced in the By-Laws to be provided by electronic means, such as email

Article IV
- Section 2: Removes the clause making it the Secretary's duty to give notice of all meetings

Article V
- Section 1: Adds "Export Committee" to the list of standing committees of the association
- Section 2: Allows standing committees to be led by a single chair or co-chairs

Article VI
- Section 1: Updates the provision to reflect the creation of United States Customs and Border Protection and United States Immigration and Customs Enforcement

Article VII
- Section 1: Updates the provision to reflect the creation of United States Customs and Border Protection

Article X
- Corrects a typo

Article XVI
- Describes the duties of the newly created Export Committee

Article XVIII (formerly Article XVII)
- Section 1: Changes reference from "Associate Member" to "Foreign Lawyer Member."

Please let us know if you have any questions or comments on these revisions.

Best regards,

Joseph W. Dorn
Secretary of the Board of Directors

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:
Frances P. Hadfield at fhadfield@gdlsk.com