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## Customs and International Trade Bar Association Quarterly Newsletter

Volume 7, Issue 2

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## **CITBA & Related News**

## **Upcoming Programs**

#### World Trade Week - NYC 2009

## CITBA HAS A NEW WEBSITE AT

http://www.citba.org

Every year in May, New York hosts a week of educational seminars, global business networking events, and an awards breakfast that recognizes exemplary contributions in the field of international trade. This year this event will run from May 18-22. CITBA is taking part in sponsoring this event. For further details please see <a href="http://www.wtwnyc.org/index.php">http://www.wtwnyc.org/index.php</a>

## **Export Controls Luncheon**

On Wednesday, June 3, 2009, CITBA's Export Controls and Sanctions Subcommittee will co-sponsor, with the New York City Bar Association's International Trade Committee, a luncheon with Special Agent Sid Simon from the Office of Export Enforcement ("OEE") of the Bureau of Industry & Security, U.S. Department of Commerce. Special Agent Simon will speak about OEE's export enforcement objectives. This event will take place at the Headquarters of the New York City Bar Association at 42 W. 44th Street. All interested CITBA members are welcome to attend. RSVP to Natasha Woodland, at <a href="woodland@global.t-bird.edu">woodland@global.t-bird.edu</a> by June 1, 2009. The cost for the event is \$35.00. There will be a billboard near the entry indicating the floor and room where this event is taking place.

#### **CITBA Elections**

The CITBA Annual Meeting and Dinner was held at the Harvard Club of New York on April 21, 2009. The CITBA election of officers and directors was held at that time. The list of new officers and directors is as follows:

President: Patrick C. Reed

Vice President: Michael S. O'Rourke
Secretary: James R. Cannon, Jr.
Treasurer: Munford Page Hall, II

Chair, Continuing Legal Education and

Professional Responsibilities Committee: Stuart M. Rosen

Chair, Customs and Tariff Committee: Brenda A. Jacobs
Chair, International Trade Committee: Joseph W. Dorn
Chair, Judicial Selection Committee: Gary N. Horlick

Chair, Liaison with Other Bar Associations

Committee: John R. Magnus

Chair, Meeting and Special Events Committee: Beth C. Ring

Chair, Membership Committee: Kathleen W. Cannon Chair, Publications Committee: Frances P. Hadfield

Chair, Technology Committee: Victor Mroczka

Chair, Trial and Appellate Practice Committee: Lawrence M. Friedman
Past President: Sandra Liss Friedman

## **USCIT News**

# Remember to renew your membership with the Court of International Trade!

By Tina Potuto Kimble, USCIT Clerk of Court

Pursuant to new USCIT Rule 74(e)(1), each member of the Bar of the CIT must renew his or her membership by this June 1 and then every fifth year thereafter. We have already sent e-mail notifications to all members of the bar (if you have not received an e-mail notification, please update your e-mail address with the Court). The fee for renewal is \$50, which can be waived in certain limited circumstances. Also, attorneys admitted in 2009 or 2008 are exempt from renewal. An attorney who fails to file the required Attorney Renewal Registration Form and pay the renewal registration fee shall be removed from the Court's bar roll, without prejudice to an application for admission as a new member. For additional information, please refer to the Attorneys' Information Page of the CIT's website at <a href="https://www.cit.uscourts.gov">www.cit.uscourts.gov</a> or call the Attorney Admissions office at (212) 264-2812.

## **Feature Articles**

Knowing the "Rules of the Road" – Exporting Vehicles from the U.S. Can be Confusing and Costly

By: Peter A. Quinter and Caleb W. Sullivan

Exporting motor vehicles from the United States to foreign destinations is a common occurrence at many ports around the country, including South Florida's ports. If you or your registered agent is engaged in this activity, you should know that U.S. Customs and Border Protection ("CBP") at the various ports can impose differing rules that are not always enforced in a uniform manner. To ensure you are being treated fairly and are not subjected to unnecessary costs and delays, exporters of used motor vehicles should understand the regulations and port-specific rules. This article will describe the rules ("of the road") and provide insights and strategies for dealing with differing port policies.

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Part 192 of Title 19 of the Code of Federal Regulations ("CFR") governs the export of used self-propelled vehicles, including automobiles. Used vehicles include any vehicle where legal title has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. Exporting vehicles entered under an in-bond procedure, or temporary importation bond, are exempt from these requirements.

CBP frequently issues port-specific rules to authenticate the validity of the exportation, in compliance with the regulations. These rules may differ from port to port, and should be carefully consulted in order to ensure compliance. For example, CBP's Miami Seaport Vehicle Export Section has published an Information Bulletin ("Bulletin") to provide guidance to exporters. The Bulletin provides that when documentation is presented to CBP by any person or company other than the owner of the vehicle, CBP will require written authorization from the owner of the vehicle, generally in the form of a limited power of attorney ("POA"). The Bulletin further requires that the person who presents the POA to CBP must have in their possession: (1) appropriate photo identification of the vehicle owner; and (2) proof of the owner's legal status in the United States when presenting the documentation. The Bulletin does not require that either (1) or (2) be submitted to CBP, as part of the export compliance procedures. The CBP Miami Seaport Vehicle Export Section also requires that the owner of the vehicle, or the owner's agent, submit to CBP a Letter of Intent ("LOI") issued by the carrier or vehicle export consolidator. The LOI must identify the shipping line, date of export, port of destination, vehicle owner, and VIN. Three (3) complete packages of the documentation must be presented to CBP (for CBP, the steamship line, and the owner). In addition, a copy of the photo identification of the person presenting the export documents must be supplied to CBP, or a copy of the photo identification of the owner of the vehicle, if different than the presenter.

The Bulletin published by the CBP Miami Seaport Vehicle Export Section differs in certain respects from port-specific rules issues at other ports. For example, an Export Guide ("Guide") published by another port in Florida does not require a copy of the photo identification of the owner of the vehicle, if different than the presenter. In addition, the Guide does not require that the agent of the vehicle owner have in their possession proof of the owner's legal status in the United States, when the vehicle owner presented the documentation and executing the POA to the agent.

Differing rules create the potential for confusion among exporters, and the possibility for varying treatment of exporters by CBP officers at different ports. Therefore, it is important for exporters of used motor vehicles to be familiar with both the relevant regulations and port-specific rules. Consultation with an attorney familiar with port-specific rules, and the pattern of enforcement by CBP personnel at different ports, is advised.

The rejection of documentation by CBP can cause unnecessary delays and additional transactional costs, including storage fees. Moreover, delays can adversely impact relationships between business partners in the supply chain. The most frequent reasons for CBP's rejection of documentation for the export of motor vehicles include the following: (1) the failure to submit an export power of attorney where one is required; (2) CBP has reason to believe that the power of attorney was signed and dated at a time when the owner was shown as not being present in the United States; (3) documents are not presented prior to the 72 hour

requirement; and (4) the presenter failed to provide valid identification.

The regulations provide that persons intending to export vehicles must present the vehicle to CBP, at the port of exportation, along with documentation describing the vehicle, including the Vehicle Identification Number ("VIN"). CBP requires the original certificate of title, or a certified copy of the certificate of title, plus two (2) copies. If the vehicle is leased, or a recorded lien exists in the United States, the provisional owner must provide CBP with a separate document from the third-party in interest, expressly providing that the vehicle may be exported.

The writing must be on the third party's letterhead, contain a complete description of the vehicle, including the VIN number, and bear the date and original signature of the third party. Vehicles can be exported by vessel, aircraft or by crossing a land border (rail, truck or under the vehicle's own power). Either way, the required documentation must be presented to CBP at least 72 hours prior to export. The difference is if by vessel or aircraft, the vehicle also must be presented 72 hours before exporting whereas, over land, the vehicle needs only to be presented when actually crossing.

CBP has authority to determine the authenticity of the documentation submitted and may assess a \$500 penalty against an importer who exports or attempts to export a vehicle without complying with the described requirements. A penalty of up to \$10,000 may be assessed against an importer who knowingly imports, exports, or attempts to import or export: (a) a stolen vehicle or any part thereof; or (b) any vehicle from which the VIN has been removed, obliterated, tampered with, or altered. Under such circumstances, the vehicle is subject to seizure and forfeiture by CBP.

It is clear that the complexity of the applicable regulations and the nuances of port-specific rules may cause significant problems for exporters including the assessment of significant fines by CBP, and the seizure and forfeiture of an exporter's merchandise. For all of these reasons, it is important that exporters of motor vehicles know the rules of the road and abide by them.

Peter A. Quinter leads Becker & Poliakoff's Customs and International Trade Practice. Caleb W. Sullivan is an attorney in the Customs and International Trade Practice Group.

## Update on the Proposed CIT Jurisdictional Bill

By Patrick C. Reed

Facilitation of proposed legislation to expand the jurisdiction of the U.S. Court of International Trade remains one of CITBA's most important objectives.

We accomplished important steps in 2008 and early 2009. First, there is widespread awareness of the proposed bill on Capitol Hill. Senator Charles Schumer's office has taken a strong interest in it, and one of his staff members gave a presentation in support of the bill at the November 2008 USCIT Judicial

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Conference. This presentation was publicized in the Washington Trade & Tariff Newsletter. CITBA representatives also had an extensive series of meetings and discussions with interested Congressional staff members. Second, with the help of CITBA Board members, the ABA Section of International Law formally endorsed the proposed bill in October 2008 and circulated its supporting letter to relevant Senate and House committees. Third, the legislative counsels in the Senate and House closely vetted a draft bill to identify and resolve any technical wording issues (the most important of which is discussed below). Fourth, early in 2009 the American Association of Importers and Exporters (AAEI) endorsed the proposed bill and included it as one of the items in its letter to the Obama Administration setting out AAEI's trade policy priorities. CITBA is currently working with AAEI to broaden and strengthen support for the proposed bill.

The proposed bill has been changed in several respects since my article in the CITBA Newsletter in early 2008. At the time, one provision would have given the Court of International Trade jurisdiction, concurrent with district courts, for the recognition and enforcement of international arbitral awards. The ABA Section of International Law discussed this provision at length when it considered the bill. Ultimately, the international arbitration bar did not support giving the Court of International Trade jurisdiction over these cases. As a result, this provision has been dropped from the proposed bill.

Another issue was identified in discussions with the Senate and House legislative counsels. The initial draft bill had sought to clarify the residual jurisdiction provision in 28 USC § 1581(i) by specifying that the Court of International Trade would have jurisdiction in any case arising under any statute in Title 19, U.S. Code. Unfortunately, it was pointed out that Title 19 is not one of the "codified" titles of the U.S. Code. Therefore, the bill cannot use the term "Title 19" to identify the statutes over which the court is to have jurisdiction. One alternative would be to list the individual statutes by the common name, such as the Tariff Act of 1930, and so on. One shortcoming with this approach is that there are at least 30 statutes in Title 19, and therefore the jurisdictional language would become very cumbersome. Another shortcoming is that, as soon as a new trade or customs statute is enacted, the jurisdictional language would have to be amended to cover the new statute. As a result, we are currently trying to revise the language of subsection 1581(i) to make it more inclusive. This approach could involve adding such language as "import prohibitions" and "conditions on importation" to the current categories of statutes listed in subsection 1581(i).

A third change under consideration is one that CITBA members proposed in response to my 2008 newsletter article. That change would be to provide for the continued automatic suspension of liquidation during judicial review of administrative reviews and scope reviews in antidumping and countervailing duty cases. This provision would make it unnecessary to obtain the ubiquitous preliminary injunctions against liquidation that are granted on consent in current law. The provision would also reduce or possibly eliminate the problems that have sometimes arisen when entries are inadvertently liquidated prematurely.

The language of the latest changes has not yet been worked out completely. As soon as the language is set, CITBA plans to post the proposed bill on the new CITBA website we will be launching this month. The website page for the jurisdictional bill will also include related documents, such as an

explanation and summary of the bill, as well as earlier versions of the bill and references to background reports that have been published in law journals.

If any CITBA members have questions or suggestions about the proposed jurisdictional bill, please feel free to contact Patrick Reed (pcr@simonswiskin.com).

Patrick C. Reed is the President of CITBA and Of Counsel at Simons & Wiskin.

### Announcements

#### **New CITBA Website!**

We are pleased to announce the launch of our new website at the same internet address - <a href="http://www.citba.org">http://www.citba.org</a>. Many thanks to the Technology Committee and Victor Mroczka, the Technology Committee Chair, for all of their efforts in redesigning the website.



#### **Employment Corner**

Are you looking for a new and exciting customs/international trade position? Are you looking for energetic and intelligent candidates for your open customs/international position? Check out CITBA's Employment Corner at: <a href="http://www.citba.org/employment.php">http://www.citba.org/employment.php</a>.

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#### **Membership**

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 <a href="http://www.citba.org/joinCITBA.php">http://www.citba.org/joinCITBA.php</a>

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 <a href="http://www.citba.org/announcements.php">http://www.citba.org/announcements.php</a> 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 (<a href="http://www.taacoalition.com">http://www.taacoalition.com</a>), which includes a "Primer on TAA petition process," among other informative materials.

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