Customs and International Trade Bar Association Quarterly Newsletter

Volume 8, Issue 2 Spring 2010

In this issue:

Links of interest:

CITBA & Related News

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UPCOMING PROGRAMS

International Trade Bar Happy Hour

On May 19, 2010, the ABA Section of International Law - International Trade Committee, in partnership with the D.C. Bar's International Trade Committee and the Customs and International Trade Bar Association, hosted an International Trade Bar Happy Hour from 6:00p.m. to 8:00p.m. EST. The registration fee for the Happy Hour is $30.00 and includes drinks and appetizers. Registration information for this event is attached.

U.S. Court of Appeals for the Federal Circuit Judicial Conference

On May, 20, 2010, the Federal Circuit will host its annual judicial conference. Chief Justice Roberts will present brief remarks at the luncheon, and Chief Judge Michel will deliver his final state of the court address. The keynote speaker for this event will be Andy Serwer, Managing Editor of FORTUNE Magazine. Registration for the conference may be made through http://www.cafc.uscourts.gov/conf/.

ANNOUNCEMENTS

CITBA Comments on CBP's Proposal to Discontinue Courtesy Notices of Liquidation

On May 17, 2010, CITBA provided comments on U.S. Customs and Border Protection's plan to discontinue mailing paper courtesy notices of liquidation to importers of record whose entry summaries are filed via Automated Broker Interface (ABI). CITBA's comments are attached and can also be found at http://www.citba.org /announcements.php.

SAVE THE DATE!

The U.S. Court of International Trade's Judicial Conference will be held on November 18, 2010.

The 2010 International Law Weekend will be held October 21-23 in New York City at Fordham Law School.

CITBA Elections

The CITBA Annual Meeting and Dinner was held at the Princeton Club of New York on April 21, 2010. The CITBA election of officers and directors was held at that time. The list of new officers and directors is as follows:

President:	Michael S. O'Rourke
Vice President:	James R. Cannon, Jr.
Secretary:	Joseph W. Dorn
Treasurer:	Munford Page Hall, II
Chair, Continuing Legal Education and Professional Responsibilities Committee:	Jay L. Eizenstat
Chair, Customs and Tariff Committee:	Brenda A. Jacobs
Chair, International Trade Committee:	Kathleen W. Cannon
Chair, Judicial Selection Committee:	Gary N. Horlick
Chair, Liaison with Other Bar Associations Committee:	Claire Kelly
Chair, Meeting and Special Events Committee:	Beth C. Ring
Chair, Membership Committee:	Kevin Sullivan
Chair, Publications Committee:	Frances P. Hadfield
Chair, Technology Committee:	Victor S. Mroczka
Chair, Trial and Appellate Practice Committee:	Lawrence M. Friedman
Past President:	Patrick C. Reed

Feature Articles

Targeted Dumping: A New Remedy to Unmask Concealed Dumping

By: Daniel L. Schneiderman

On March 26, the Department of Commerce announced a dramatic shift in its policy regarding "targeted dumping" in antidumping investigations. Where targeted dumping is found to exist, Commerce now will calculate dumping margins for *all sales* (rather than the tiny fraction of sales under its previous practice) using the "average-to-transaction" methodology, which calculates margins for individual export sales. *Polyethylene Retail Carrier Bags from Taiwan*, 75 Fed. Reg. 14,569, 14,570 (Mar. 26, 2010) (final determination) ("*PRCBs from Taiwan*"). This methodology, unlike the standard "average-to-average" methodology (which calculates margins for product groupings), does not permit offsets for non-dumped sales. Commerce's new approach thus provides a powerful, WTO-consistent tool to unmask dumping that otherwise would be concealed by such offsets. For the domestic PRCB industry and other struggling U.S. manufacturers, this could not have come at a better time.

Historical Context

The term "targeted dumping" refers to a statutory provision that enables Commerce to depart from its normal margin calculation methodology where there exists a "pattern of export prices" to the United States "that differ significantly among purchasers, regions, or periods of time." 19 U.S.C. § 1677f-1(d)(1)(B)(i). An exporter engages in targeted dumping when it sells at lower prices to one region or customer (or during one time period), while selling at higher prices to other regions or customers (or during other time periods). Where such patterns are found to exist, Commerce is permitted to calculate margins on a transaction-specific basis (*i.e.*, for each individual export sale), rather than on a weighted-average basis for product groupings.

The "targeted dumping" provision was intended to limit the problem of "masking" that occurs under the average-to-average methodology whereby higher-priced sales of a product could, through averaging, conceal dumping margins attributable to lower-priced sales of that same product.[1] Such masking generally was not problematic until Commerce announced at the end of 2006 that it would implement an adverse decision by the WTO requiring additional offsets between products when applying the average-to-average methodology.[2] That is, sales of higher priced (non-dumped) products would be permitted to offset, and thus to conceal, the dumping attributable to sales of lower priced (dumped) products. Consequently, although the statutory basis for targeted dumping existed since 1994, domestic industries had little incentive to pursue the remedy until 2007. It was in that year that the targeted dumping methodology was first employed in the investigation of *Coated Free Sheet Paper from Korea*, 72 Fed. Reg. 60630 (Oct. 25, 2007) (final determination) ("*CFS Paper*").

A Toothless Remedy?

Although *CFS Paper* was a step in the right direction, the methodology applied in that case – and in the handful of targeted dumping cases over the following two years – did very little to prevent the concealment of dumping margins. Commerce applied the remedial "average-to-transaction" methodology only to a very small subset of sales that could affirmatively be identified as having been "targeted," and it continued to apply the standard "average-to-average" methodology, which allows offsets, to all remaining sales. Under this bifurcated approach, most non-dumped sales were still permitted to offset the margins attributable to most dumped sales. Targeted dumping, it seemed, was becoming a toothless remedy with virtually no impact on weighted-average dumping margins.

PRCBs And The New Approach

At the end of 2008, Commerce decided to rethink its approach to targeted dumping, and it withdrew all of its existing regulations on the subject.[3] This included the withdrawal of a regulatory impediment to full application of the targeted dumping remedy,[4] thus setting the stage for the change in direction to come. In *PRCBs from Taiwan*, Commerce concluded that, where there exist patterns of U.S. prices "that differ significantly among purchasers, regions, or periods of time," the statute permits application of the "average-to-transaction" methodology to *all sales* – not just to those sales considered "targeted."

This policy shift renders targeted dumping a potent tool to unmask dumping. In investigations where targeting is found, margins now will be calculated much as they are in administrative reviews (absent the contemporaneity requirement for matching sales). That is, a dumping margin will be calculated for each U.S. sale, and "negative" margins attributable to non-dumped sales will not be permitted to offset any margins on dumped sales.[5]

For many antidumping investigations (such as *PRCBs from Taiwan*), full application of the targeted dumping remedy will unmask concealed dumping and thus will significantly increase the overall dumping margin. The methodology will have little or no impact, however, in cases where dumping margins are not concealed by offsets, such as when all sales are dumped or all sales are non-dumped. In such instances, Commerce will apply the traditional average-to-average methodology. Thus, in *PRCBs from Indonesia*, a companion case to *PRCBs from Taiwan*, Commerce declined to employ a targeted dumping remedy because "the result using the standard average-to-average methodology is not substantially different from that using the alternative average-to-transaction methodology."[6]

Targeting the Future

Commerce's new targeted dumping approach may be viewed with suspicion by certain of our trading partners, some of whom have disputed similar "zeroing" methodologies before the WTO. Nevertheless, the new approach is defensible – even under a WTO jurisprudence that has been less than friendly to other "zeroing" practices. The WTO Appellate Body has not squarely addressed the targeted dumping methodology, but it has recognized the exceptional nature of that remedy and hinted that averaging rules required under the standard methodology may not apply.[7] Moreover, allowing the use of zeroing in the limited targeted dumping context could be seen as a way to resolve the "mathematical equivalence" problem.[8] That is, it would allow the "average-to-average" and "average-to-transaction" methodologies to produce different results, such that the latter methodology is not rendered superfluous.

While those issues may be resolved in future years, for now petitioning domestic industries should strongly consider filing, where warranted by the record, an allegation of targeted dumping. Commerce currently identifies the requisite patterns of significant price differences using a complicated statistical analysis described in *Certain Steel Nails from China*, 73 Fed. Reg. 33,977 (June 16, 2008) (final determination) ("*Nails*"). The *Nails* methodology has been criticized for its inflexibility, arbitrary thresholds, and inability to recognize certain obvious pricing patterns. Because the *Nails* test was designed to comply with the now-withdrawn targeted dumping regulations, the door remains open for Commerce to revise its practice. In the meantime, however, petitioners would be wise to employ the *Nails* methodology – in addition to any proposed alternative approaches – in their allegations.

Mr. Schneiderman is Counsel with the Washington, D.C. office of King & Spalding.

[1] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994) at 842-843.

[2] *See* Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation, 71 Fed. Reg. 77,722 (Dec. 27, 2006).

[3] Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 Fed. Reg. 74930 (Dec. 10, 2008) (interim final rule).

[4] *See* the former 19 C.F.R. § 351.414(f)(2) (2007).

[5] The elimination of offsets in other contexts has frequently been referred to as "zeroing," because negative dumping margins on non-dumped sales are treated as zero rather than as offsets to positive dumping margins on dumped sales.

[6] *PRCBs from Indonesia,*75 Fed. Reg. 16,431, 16,432 (Apr. 1, 2010) (final determination).

[7] United States – Continued Existence And Application Of Zeroing Methodology, AB-2008-11 (Feb. 4, 2009) at para. 297, WT/DS350/AB/R.

[8] *See id.*

What Happens When U.S. Customs Does Not Decide A Protest Within Two Years?

By: Patrick C. Reed

Section 1515(a) of title 19, U.S. Code, provides that "the appropriate customs officer, within two years from the date a protest was filed …, shall review and shall allow or deny such protest in whole or in part." The Court of International Trade's recent decision in Hitachi *Home Electronics (America), Inc. v. United States*, Slip Op. 10-46 (April 30, 2010) (per Restani, C.J.), addresses the situation in which U.S.

Customs does not issue a decision on a protest within the two-year statutory period. Although the precise question was an issue of first impression, the Court's decision invokes the entrenched maxim that a statutory deadline can be "directory and not mandatory." It does not offer importers a good solution to the problem of administrative delays in deciding protests.

In May 2005, Hitachi began filing a series of protests and applications for further review on the classification of plasma flat-panel televisions from Mexico, claiming that the televisions should be eligible for duty-free treatment under NAFTA. In November 2007, when it had received no decision on its lead protest, Hitachi commenced an action in the Court of International Trade as a protective measure in the event the protest had been denied but no notice had been issued. Hitachi subsequently filed additional summonses and, finally, filed the summons in Court No. 09-00191 in May 2009, the action in which Slip Opinion 10-46 was decided.

The Government moved to dismiss the case for lack of jurisdiction. Hitachi argued that the Court has jurisdiction under 28 U.S.C. 1581(i) because the protests were allowed by operation of law after Customs had failed to allow or deny the protest within the two-year period. In the alternative, Hitachi argued the protests should been deemed denied and the case on the merits should proceed under 1581(a) jurisdiction.

Hitachi's "deemed allowed" argument was based on the legislative history of the Customs Courts Act of 1970, which enacted section 1515(a) in substantially its current form. Before 1970, section 1515 gave only ninety days for review of protests, and if Customs did not act within ninety days, the protest was deemed denied and was automatically referred to the U.S. Customs Court. The 1970 legislation abolished the automatic referrals and increased the time for review at the administrative level to two years. As introduced, the bill provided expressly for constructive denial after two years, but this provision was later removed in committee.

Hitachi argued that removing the constructive denial, while retaining the two-year time period, meant that Congress intended to provide for constructive approval. In particular, Hitachi noted the Senate Judiciary Committee's statement that section 1515 "requires the Department of the Treasury to allow a protest or expressly deny it." Slip Op. 10-46, at 9 (quoting 1970 Senate Report). According to Hitachi, "expressly deny" refers to denial in writing and with notice as provided in the statute, whereas the absence of "expressly" before "allow" should mean that the allowing of a protest need not occur "expressly." Hitachi argued that "allow" can mean "to permit something to happen by doing nothing." *Id.* at 9 (quoting plaintiff's brief).

The Court was not persuaded, however. It ruled that the quoted language from the Senate Judiciary Committee "does not compel the conclusion that Hitachi's protest was allowed because it was not expressly denied within two years." *Id.* And it found "no support … in customs law" for Hitachi's definition of allowing a protest by doing nothing. *Id.* The Court held that statute does not prescribe any consequences for failing to meet the two-year deadline. As a result, the two-year period for allowing or denying a protest is "directory and not mandatory." *Id.* at 8.

After rejecting Hitachi's "deemed allowed" argument, the Court also ruled that it could not assume jurisdiction under 28 U.S.C. 1581(i) on the ground that the normal protest remedy was manifestly inadequate. This was because section 1515(b) of 19 U.S. Code allows an importer to request accelerated disposition of a protest, after which the protest is deemed denied if Customs does not issue a decision within thirty days. The accelerated disposition procedure, the Court said, means that an importer aggrieved by a delay in processing a protest must request accelerated disposition instead of invoking 1581(i) jurisdiction to seek to bypass denial of protests and 1581(a) jurisdiction.

Hitachi's second argument was that the Court should assume jurisdiction under 28 U.S.C. 1581(a) in view of the Court's 1993 decision in *China Diesel Imps., Inc. v. United States*, 17 CIT 498 (1993). In *China Diesel*, which had been Chief Judge Restani's own decision, the Court assumed jurisdiction under 1581(a) where Customs had failed to act on an importer's protest against the exclusion of its merchandise within the 30-day period required under the Customs Regulations. Although the governing regulation had

no "deemed denial" provision, the Court ruled that the delay for the importer in that case created the presumption that Customs had denied the protest. In *Hitachi*, however, the Court ruled that *China Diesel* is distinguishable because of the hardship occasioned by the complete and indefinite exclusion of the importer's goods in that case, whereas "Hitachi's only claim is that the duties it paid … should be refunded." The Court also said that Customs in *China Diesel* offered no reason for the delay, but in *Hitachi* Customs explained that it needed to examine all the issues surrounding not only Hitachi's imports but also imports of similar televisions by Samsung.

In sum, the Court dismissed Hitachi's lawsuit for lack of jurisdiction, without prejudice. It said that Hitachi may request accelerated disposition of its protests, followed by commencing a new civil action under 1581(a) jurisdiction if the protests are not approved within thirty days.

The Court's decision in *Hitachi* illustrates a shortcoming in the law governing the administrative review of protests. The procedure for accelerated disposition of protests was not intended as a remedy for delays of more than two years in processing protests at the administrative level. Instead, it was intended to allow importers who wish to have their cases heard in court as soon as possible to be able to cut off the administrative process well before two years. But many importers are seeking the just, timely, and inexpensive determination of their protests at the administrative level. Customs litigation in the Court of International Trade has become sufficiently expensive that it deters many importers. In addition, there is a perception among at least some members the private bar that litigation often makes the administrative process a long and costly exercise in futility. This is because government counsel in court may well have no familiarity with the factual and legal record developed before the agency. In such cases, importers' attorneys often feel frustrated that they have to start advocating their case from square one all over again.

Hitachi's dissatisfaction is clearly not unique, nor is the Slip Opinion 10-46 the end of this story. Hitachi's notice of appeal was already filed May 5, 2010, three business days after the Court's decision. And another case was recently filed in which an importer has been faced with a delay of more than two years in obtaining a decision on a protest *Norman G. Jensen, Inc. v. United States*, No. 10-00115 (CIT filed Apr. 4, 2010) (assigned to Judge Eaton). In *Jensen*, the importer seeks mandamus to compel Customs to reach a decision. Mandamus would not be expected to obtain a decision on a protest faster than seeking accelerated disposition. Apparently the importer is seeking a judicial statement that a statutory deadline has to have consequences and that "within two years" does not mean "within as much time as Customs wishes." Whether *Jensen* is still viable after *Hitachi* remains to be seen.

Mr. Reed is Of Counsel at Simons & Wiskin (New York, New York). CITBA President (June 2008 to May 2010).

In Memoriam

It is with profound sadness that we announce the passing of three members of the Customs and International Trade Bar's Community. Mr. John Cannella, Mr. Harvey Fox, and Mr. David Lafer. John, Harvey and David were men of sterling character and the highest integrity. They served our country with great distinction, dedication, and honor, and were held in the highest esteem by their colleagues. They will be fondly remembered and greatly missed.

John Cannella

John passed away on April 23, 2010. He was born on February 2, 1944, in Staten Island, New York. He graduated from CW Post College in February 1970, with a B.A. in Sociology. He worked at the U.S. Court of International Trade for over 30 years. At the time he retired from the court, he had the distinction of being the longest serving employee at the Court. John's last position at the CIT was as the Operations Manager for the court. He had retired May 1, 2009.

Harvey B. Fox

Harvey B. Fox was born in Baltimore, Maryland, on November 19, 1941 and did his undergraduate studies and his legal studies at the University of Baltimore, where he received his LL.B. (J.D.) degree in 1964. He was admitted to the bar of the State of Maryland in 1966 and the bar of the District of Columbia in 1983. Harvey had a distinguished career as a customs lawyer and public servant for nearly forty-five years. He served as an attorney with the Office of Regulations and Rulings, United States Customs Service, for nearly thirty years from 1966 until 1995, including serving as Director, Regulations and Legal Publications Division, from 1973 though 1977, as Director, the Entry Procedures and Penalties Division, from 1977 through 1980, as Director, Classification and Value Division, from 1980 through 1986, and as Director, Office of Regulations and Rulings, from 1986 through 1995.

Mr. Fox was an attorney in private practice from 1995 through 2010 with the law firms of Siegel, Mandel & Davidson and Adduci, Mastriani & Schaumberg, LLP. Harvey B. Fox was an active member of numerous professional organizations, including the Customs Lawyers Association, of which he served as President for seven years; the American Bar Association, the Federal Bar Association, the District of Columbia Bar, and the Customs and International Trade Bar Association. Harvey passed away on March 21, 2010.

David Lafer

David Lafer passed away at age 57 on February 25, 2010. He was born in New Jersey and grew up in Virginia. He obtained his B.S., cum laude, from Case Western Reserve University in 1974, and his law degree from Cleveland State University in 1977. In 1978, he began his career as an attorney for the United States Customs Service, Office of Regulations and Rulings, and subsequently as an Assistant Regional Counsel in Chicago. In 1981, he joined the Civil Division of the Department of Justice as a Trial Attorney specializing in international trade and customs law. In 2003, he was promoted to Senior Trial Counsel, in recognition of his extensive expertise and experience in the Court of International Trade and the Court of Appeals for the Federal Circuit. In that capacity, he supervised and personally represented the United States in civil and appellate litigation, including the defense of U.S. international trade policy, the prosecution of claims for the recovery of monies and penalties fraudulently diverted from the U.S. Treasury, and the protection of U.S. financial and commercial interests under international contracts and treaties. He retired from Federal service in 2006. He was admitted to practice in Ohio and the District of Columbia and a member of the United States Court of International Trade, United States Court of Federal Claims, and United States Court of Appeals for the Federal Circuit. He received numerous commendations from various Federal agencies and many awards from the Department of Justice.

On The Move....

Teresa Polino joins Thompson Coburn LLP

Ms. Polino has joined Thompson Coburn's Washington, DC, office as a partner in the Transportation and International Commerce group. Earlier in her career, Terry served as senior attorney in the General Counsel's Office at the U.S. Department of the Treasury. Terry began her career in the Office of Regulations and Rulings of the U.S. Customs Service (CBP's predecessor agency) and also served as an attorney-advisor in the Office of the Chief Counsel, U.S. Customs Service.

CITBA Online –

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

Membership

CITBA dues may now be paid online 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.

ABA Section of International Law

Your Gateway to International Practice

The International Trade Committee of the
American Bar Association's Section of International Law
In partnership with the
DC Bar International Trade Committee and the
Customs and International Trade Bar Association

Invites You to Attend a

International Trade Bar Happy Hour

REGISTER!

Date: Wednesday, May 19, 2010
Time: 6:00 P.M. – 8:00 P.M.
Registration Fee: $30, includes open bar and appetizers

The Rooftop at King & Spalding LLP
1700 Pennsylvania Avenue N.W., Washington, DC 20006
Closest Metro: Farragut West

To attend, please complete the registration form and fax to
(202) 662-1669 or mail to the American Bar Association:
740 15th Street N.W., Washington, DC 20005.

Sponsored by:
ABA Section of International Law Trade Committee,
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International Trade Happy Hour

Registration Form

May 19, 2010

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Please complete this form, and submit no later than Wednesday, May 18, 2010 to:

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ABA Section of International Law
740 15th Street, NW, Washington, D.C. 20005
Email: madhavaa@staff.abanet.org Fax: 202.662.1669 Phone: 202.662.1660

Customs and International Trade Bar Association

May 17, 2010

Trade and Commercial Regulations Branch
Office of International Trade
U.S. Customs and Border Protection
799 9th Street, N.W. (Mint Annex)
Washington, D.C. 20229-1179

Re: Courtesy Notice of Liquidation; Notice of Proposed Rulemaking, USCBP-2010-0008, 75 Fed. Reg. 12483 (March 16, 2010)

Attn: Laurie Dempsey, Trade Policy and Programs

Dear Ms. Dempsey,

The Customs and International Trade Bar Association (CITBA) is pleased to provide its views on the proposal by U.S. Customs and Border Protection (CBP) to discontinue mailing paper courtesy notices of liquidation to importers of record whose entry summaries are filed via the Automated Broker Interface (ABI).

CITBA is a nationwide bar association founded in 1917 and composed of lawyers who practice customs and international trade law. The association's purposes include seeking to improve the legal system and the administration of justice under the U.S. customs and international trade laws. CITBA members who are government attorneys or officials did not participate in the consideration of whether to file these comments or in the preparation of the comments.

CITBA appreciates the cost savings that CBP can achieve by eliminating the printing and mailing of liquidation notices to ABI filers.

Please reply to: Patrick C. Reed, CITBA President, 220 Fifth Avenue, New York, New York 10001
Tel. (212) 684-5656; fax (212) 684-5716

Nevertheless, to ensure that all importers of record are sufficiently informed to permit full exercise of their legal rights, CITBA urges CBP to postpone the change in practice until the Automated Commercial Environment (ACE) is fully implemented and electronic courtesy notices can be sent to all importers of record. Until that point, there is a real risk that some importers will be disadvantaged by the absence of a courtesy notice.

As CBP notes, electronic courtesy notices are sent to the ABI filer, which may be the customs broker or, if the importer is a self-filer, may be the importer of record. Most ABI filers are brokers. Without a paper copy by mail, those importers who are not self-filers will be reliant upon their broker to provide them with notification of the liquidation dates for their entries.

Knowledge of the liquidation date of an entry is important, for a variety of reasons. Most significantly, liquidation triggers the start of two key deadlines: the 180 days in which an importer has a legal right to file a protest on issues such as valuation, classification and the application of antidumping and/or countervailing duties, and the 90 days in which CBP may reliquidate an entry. The basis for filing a protest may exist even where there is no change asserted by CBP for that entry. In most instances, the timing of an automatic no-change liquidation should be readily apparent to knowledgeable importers – 314 days from entry under current practice. But when this does not occur, that fact itself may compel further review by the importer to determine whether it is an isolated occurrence or an indicator of an issue that should be reviewed more closely. In the case of entries subject to antidumping and countervailing duties, it is highly unlikely that liquidation will occur 314 days from entry. Other examples of instances in which liquidation may be suspended include drawback entries, vessel repair entries, and entries where CBP needs more information.

Because of those considerations, CITBA recommends that before discontinuing the mailing of courtesy notices CBP first have in place the systems to ensure that all

Please reply to: Patrick C. Reed, CITBA President, 220 Fifth Avenue, New York, New York 10001
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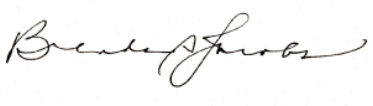
importers of record can themselves readily ascertain or confirm the liquidation dates for each of their entries. Ultimately, but not currently, ACE may have the comprehensive capability to offer ready access to an alternative form of courtesy notice that will reach all importers of record, regardless of whether their entries are filed by a customs broker or self-filed. At that point, the change in practice should have no negative consequences for the importer community.

Another option would be for CBP to conduct a one-time survey of all current importers of record whose entry summaries are filed in ABI to identify those entities that elect to opt out of hard copy mail service. That survey is likely to result in a substantial reduction of paper courtesy notices. New importers of record could be given the same option concurrent with the assignment of an IOR number or be placed on notice that if they do not want to rely upon ABI for their liquidation information, they will have to participate in ACE.

Alternatively, and at the very least, before discontinuing the courtesy mail service, CBP should establish a sufficient transition period for importers of record who are not self-filers under ABI to begin participating in ACE, assuming that the liquidation information on the ACE portal will be highlighted by CBP. That provides an incentive for participation in ACE by the importer community, but also for CBP to complete the ACE implementation process (and for Congress to fully fund completion of the system).

CITBA appreciates this opportunity to share its views with CBP and stands ready to discuss this issue further.

Respectfully submitted,



On behalf of CITBA

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Please reply to: Patrick C. Reed, CITBA President, 220 Fifth Avenue, New York, New York 10001
Tel. (212) 684-5656; fax (212) 684-5716