Customs and International Trade Bar Association Quarterly Newsletter

Volume 6, Issue 3 Summer 2008

In this issue:

Links of interest:

CITBA in Action

Uniform Rules of Origin for Imported Merchandise

Beginning with a teleconference held on September 8, 2008, the Customs & Tariff Committee has begun drafting CITBA's comments to the Notice of Proposed Rulemaking U.S. Customs and Border Protection issued on adopting uniform rules of origin for imported merchandise (73 Fed. Reg. 43,385 et seq. (July 25, 2008)). Comments are due October 23, 2008. Anyone interested in participating should contact Michael "Ted" Murphy, who is spearheading the project, at Michael.E.Murphy@BAKERNET.com

Trial Skills Seminar

On Thursday, October 16, 2008, from 2-4pm, the U.S. Court of International Trade and CITBA will present a Trial Skills Seminar at the Court, One Federal Plaza, New York, New York, 10278. Two private practitioners and two Department of Justice attorneys will present mock trial sections focused on laying foundations, making objections, and using experts. The Honorable Evan J. Wallach will be officiating. Additionally, a reception will follow the seminar. Registration details are attached below.

International Law Weekend

The annual International Law Weekend conference will take place Thursday, October 16, through Saturday, October 18, at the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York. CITBA is a cosponsor of the conference, thereby allowing CITBA members to attend all panels during the conference free of charge. Two panels will be of special interest to CITBA members. First, CITBA is presenting a panel Friday morning, October 17, on "Trade Policy under the Next Administration" from 9:00 am to 10:30 am. The speakers will be Philip Levy, a resident scholar at the American Enterprise Institute and advisor to the McCain campaign; Daniel Tarullo (tentative), a professor at Georgetown Law Center and advisor to the Obama campaign; and Professor Merit Janow of Columbia University. Second, on Friday afternoon, October 17, from 4:00 pm to 5:30 pm, there will be a panel on "Regional Trade Agreements: Current Issues and Controversies." The speakers will be Professor Chi Carmody of Western Ontario School of Law; Professor David Gantz of the University of Arizona College of Law; and Professor Cherie O. Taylor of South Texas College of Law. The full program for the International Law Weekend is available on the website of the American Branch of the International Law Association, www.ambranch.org.

CITBA Fall Dinner

On November 18, 2008, CITBA will hold its Fall Dinner at the Harvard Club in New York. The guest speaker for this event will be David A. Andelman, editor of W*orld Policy* Journal and former executive editor of *Forbes.* The dinner precedes the 15th Judicial Conference of the U.S. Court of International, which will be held on November 19, 2008, at Bridgewaters, 11 Fulton Street, New York.

CIT Jurisdiction Legislation

CITBA continues to work actively on draft legislation to expand the jurisdiction and improve the powers of the Court of International Trade. Over the summer CITBA President Patrick Reed, former Presidents Melvin Schwechter and Bill Outman, and former Board Member Lee Sandler have given a series of briefings for staff members of the Senate Finance Committee, Senate Judiciary Committee, House Ways and Means Committee, and House Judiciary Committee, as well as staffers for several individual Senators and Congressmen. In addition, CITBA Board Members John Magnus and Lawrence M. Friedman have been working in close liaison with leadership of the American Bar Association to seek the ABA's support for the legislation.

CITBA Supports Reauthorization of TAA

On July 30, 2008, CITBA sent a letter to Senators Baucus and Grassley supporting Reauthorization of Trade Adjustment Assistance. The letter is attached below.

CITBA News

Lacey Act Amendment

Included as Section 8204 of the Consolidated Farm Bill, the Lacey Act, 16 U.S.C. 3371 *et seq.*, was amended for the purpose of combating illegal logging and expanding the Act's anti-trafficking protections to a broader set of plants and plant products. Beginning on December 15, 2008, the Act requires a country of origin import declaration for plants and plant products, except for plant-based packaging materials used exclusively to import other products. Violations of the Act may be prosecuted through either civil or criminal enforcement actions and the imported items may be seized and forfeited.

First Sale Retroactive Filing

Beginning August 20, 2008, under the "First Sale" rule, CBP was mandated to collect data when the transaction value of goods entered into the United States was determined on the basis of the price paid by the buyer in a sale occurring earlier than the last sale. CBP subsequently announced a 30-day grace period to allow filers time to transmit this new data element to Customs. Therefore, CBP is now requiring importers to retroactively report transaction value information for entries made between August 20, 2008 and September 19, 2008, which are subject to the First Sale Declaration Requirement. Importers or filers must submit a written request to the respective CBP ports of entry to amend affected entry summaries. Retroactive reporting of the first sale declaration for entry summaries filed during the grace period must be presented to CBP by close of business September 26, 2008.

Petition for Certiorari to the Supreme Court filed in *Agfa v. United States*, 520 F.3d 1326 (Fed. Cir. 2008).

A petition for Certiorari to the Supreme Court was filed in *Agfa v. United States*. The primary issue is the classification of photographic printing plates. The issue presented for Certification to the Supreme Court is whether the Court of Appeals for the Federal Circuit improperly ignored the plain language of the HTSUS and gave too much deference to non-binding guidance from the WCO.

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:

Donald C. Kaliebe
Case Management Supervisor
(212) 264-2031
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You can also learn more about TAA by visiting the CITBA website (http://www.citba.org/announce.htm) 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.

Feature Articles

"Trade Agreement Parity" Proposal Introduced in Congress to Create and Enhance U.S. Manufacturing by Equalizing Tariffs in U.S. and Foreign Facilities

by Lewis E. Leibowitz[1]

A new proposal introduced by Representative Bill Pascrell (D-N.J.) would enhance the ability of U.S. foreign trade zones (FTZs) to capture the benefits of regional and bilateral free trade agreements (FTAs) for manufacturers that produce in the United States for the U.S. market. The bill, H.R. 6415, was introduced on June 26, 2008.

FTZs are secure areas in which goods may be admitted and stored, processed, inspected or manufactured without paying applicable Customs duties. If a product is brought out of the FTZ and entered for consumption in the U.S. Customs territory, it is dutiable as an imported good (see 19 U.S.C. § 81c). It may be classified as the entered finished product or, if the "privilege" was requested before transformation, as the imported input that was previously admitted to the FTZ. If the finished product rate is lower than the rate for the input, the FTZ user will generally elect "non-privileged" status for the foreign input. Conversely, the FTZ user may elect "privileged" status for those inputs dutiable at a lower rates than the finished product.

Under the current practice of the Foreign-Trade Zones Board, when goods are entered in the Customs territory of the United States for consumption, or for exportation to a free trade agreement (FTA) country (e.g., NAFTA, Chile), the duty rate applied to the entered good is the "Column 1" or Normal Trade Relations rate of duty, which applies to imports from most countries that trade with the United States, but have not entered into an FTA with the United States.

The Pascrell bill would allow the Foreign Trade Zones Board, an interagency board consisting of the Departments of Commerce and Treasury, to authorize FTZ users to enter merchandise in the United States Customs territory from an FTZ at the FTA rate for the entered product, provided that the entered good meets the rule of origin for that product under an FTA to which the United States is a party. These duty rates are often, but not always, free. Zone users could realize considerable savings under this proposal, because of the lower duty rates applicable to FTA imports.

The FTZ Board requires specific approval for new manufacturing operations in FTZs because they can affect the duties collected by CBP, and because duty reductions could have an adverse effect on competing or supplying U.S. firms. The Pascrell bill would incorporate this "public interest" test in determining whether applications for FTA benefits should be approved. These regulations are found in 15 C.F.R. § 400.31.

FTA manufacturers can meet the applicable "rule of origin" by adding value in the FTA country, changing the tariff classification of the product ("tariff shift"), or making a finished product that meets a "regional value content" requirement (e.g., under NAFTA). For many products, two more of these rules must be met. If the applicable rule is met, the product will enter the United States duty free or at a reduced rate, as provided in the U.S. Harmonized Tariff Schedule.

A wide variety of products may meet the rule of origin of an FTA without using solely U.S. or FTA inputs—third country inputs may be used. Under NAFTA, for example, the "regional value content" of a passenger car may contain up to 37.5 percent non-originating materials and the vehicle may still meet the NAFTA rule of origin.

In such a case, third-country parts are subject to duty in the producing FTA country. Under NAFTA, duty drawback or other duty-deferral procedures are not available to reduce these third-country duties. However, Canada and Mexico have reduced or eliminated many such duties because they are important to manufacturers in those countries. The United States has not done so.

Under FTAs other than NAFTA, duty deferral (including Temporary Importation under Bond, bonded warehouses and duty drawback) are generally available, reducing the effective duty rate on products exported to the United States to zero. If the finished product meets the applicable rule of origin under the FTA, it will be entered into the United States at zero duty or at a reduced rate under the FTA.

Compare this treatment with that afforded to a U.S. manufacturer making the same product with the same components in the United States. The manufacturer must pay duty at the Column 1 rate for any non-FTA inputs used in manufacturing, whether that product is treated as the input or the finished good. If the manufacturer is in an FTZ, the entry may shift the tariff classification to that of the finished product, which could be lower than the rate for the inputs and thereby save on Customs duties to a degree. But a duty-free rate under an FTA, even if the product meets the rule of origin under an FTA, is not available to a manufacturer producing in a U.S. factory.

Therefore, the U.S. manufacturer, using the same parts and the same processes as a competitor or sister plant in an FTA country, will pay more U.S. Customs duties than the foreign manufacturer. And the FTA producer may well pay no foreign duty on its third-country inputs, meaning that the U.S. manufacturer will be further disadvantaged.

Trade Agreement Parity, or "TAP," would remove the inequality of tariff treatment by permitting a U.S. facility, upon authorization from the Foreign Trade Zones Board in a "public interest" proceeding, to obtain an applicable FTA duty rate, if it manufactures in an FTZ and if the process and inputs comply with the applicable FTA rule of origin, just as would be required if that plant were in a foreign FTA country.

An economic analysis of TAP prepared by Gary Hufbauer and Dean De Rosa, both affiliated with the Peterson Institute of International Economics, estimated that TAP could create about 95,000 new manufacturing jobs in FTZs within five years, and cause capital investment in those zones of some $24 billion. TAP could be "the single-best job creation plan for U.S. manufacturing that Washington can offer today," according to Willard E. Berry, President of the NAFTZ.

TAP would not amend any FTA, would not require renegotiation of any FTA and would not violate any WTO agreement. However, the bill would repeal a provision in the NAFTA Implementation Act of 1993 that now prevents U.S. manufacturers from meeting a NAFTA rule of origin through processing that takes place in a foreign trade zone, if the resulting product is entered for consumption in the United States. The provision,

currently codified at 19 U.S.C. § 3332(a)(2)(A), is not required by the NAFTA itself. It was aimed at preventing "platforming" of manufacturing in the NAFTA region (the use of non-NAFTA parts and components effectively free of duty); but it has not worked for U.S. producers, because both Canada and Mexico have eliminated duties on many non-NAFTA inputs that are important to manufacturing in those countries, leaving the U.S. as the only country in NAFTA that unilaterally imposes Customs duties on manufacturers in its own territory.

The disparity in duty treatment between U.S. and FTA manufacturing facilities encourages companies to serve the U.S. market from facilities in another FTA country rather than from a U.S. facility, costing U.S. manufacturing jobs. U.S. Customs treatment is by no means the only issue encouraging relocation of manufacturing jobs; but it is definitely a factor for many companies.

[1]*Lewis Leibowitz is a partner at Hogan & Hartson LLP in Washington, D.C.*

Canada's Cargo Security Program Overhaul: More Stringent Requirements for Participants

By Greg Kanargelidis and Elysia Van Zeyl[1]

In June 2008, significant developments were announced in connection with Canada's cargo security program, Partners in Protection. Current participants, including importers and carriers among others, as well as prospective participants, should take note of these developments and the opportunities and implications they entail.

For the past several months, the Canada Border Services Agency (CBSA) has been working towards tw significant milestones which culminated in June 2008 with respect to Canada's Partners in Protection (PIF program: a complete overhaul of the program affecting both current and prospective participants; and mutual recognition agreement with the United States Customs Border Protection (CBP) respecting the U.S. own cargo security program.

OVERVIEW OF PARTNERS IN PROTECTION

The PIP program is a cooperative effort between the Government of Canada and private industry to ensure cargo security from supplier to customer. The PIP is intended to contribute to protecting the border against potential threats to Canada's health, security and economy.

PIP is the Canadian equivalent of the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT). The benefits of PIP to the participant, ideally, include the more efficient customs processing of shipments, reputational benefits and a reduction in the likelihood that the organization will be used to smuggle contraband. Furthermore, PIP participants may be eligible to participate in the Free and Secure Trade program (FAST), which is available only to PIP participants in Canada.

To partake in the PIP program, organizations must sign a memorandum of understanding (MOU) with the CBSA. In connection with this agreement, organizations must self-assess the security of their supply chain. To do this, companies must submit a completed security profile to the CBSA. The security profile requires the applicant to provide information regarding physical security (*e.g.,* security of company's premises against theft, shipping and receiving controls, etc.), personnel security (*e.g.,* pre-employment screening, training, etc.), and the security of service providers (*e.g.,* standards affecting owner-operators, driver agencies, etc.). In the past, the CBSA would then review the self-assessment and provide suggestions and guidance regarding how the company should address potential gaps in security. In accordance with these recommendations, the organization and the CBSA develop a joint plan of action. Thereafter, the organization is expected to participate in awareness sessions and consult with the CBSA on a regular basis.

MUTUAL RECOGNITION AGREEMENT

On June 28, 2008, the CBSA and CBP signed an arrangement that recognizes the compatibility of the countries' respective cargo security programs – Canada's Partners in Protection program and the U.S. Customs – Trade Partnership Against Terrorism. The arrangement recognizes that both countries apply

similar security standards and perform similar site validations when approving companies for membership in their respective cargo security programs. Both countries now use similar criteria when granting companies membership to their respective cross-border programs.

The mutual recognition agreement is intended to streamline the flow of commerce and to contribute to the development of an international standard for cargo security. The mutual recognition agreement was concluded after extensive collaboration between CBSA and CBP and after detailed comparisons of each countries cargo security programs – both principles and practices, were undertaken.

The mutual recognition agreement should be a welcome development by companies who are involved in Canada – U.S. trade and wish to participate in both PIP and C-TPAT. Although separate applications must be submitted for PIP and C-TPAT, the application and approval process should be significantly streamlined under the mutual recognition agreement. PIP and C-TPAT members can continue to benefit from membership in the FAST program which will enable them to use the FAST border crossing lane when travelling from Canada to the U.S., or vice versa.

MODERNIZED PIP PROGRAM

On June 30, 2008, the CBSA unveiled the new PIP program. The new PIP introduces different categories of participation, new mandatory minimum standards and aims to be more compatible with its U.S. equivalent.

The CBSA has been consulting extensively with stakeholder organizations over several months, and continues to do so, in connection with all aspects of the new PIP. These consultations included issues such as: minimum security requirements; the content of the memorandum of understanding which all participants must enter into with the CBSA; the transition strategy for existing members; process issues such as cancellation/suspension, acceptance/rejection, approval/denial, and appeal/reinstate; and, most recently, cargo sealing guidelines.

PROGRAM CATEGORIES

Applicants will fit into one of two categories within the modernized PIP program: members or associates. Members receive the benefits of full participation in the PIP program, which includes the ability to register for FAST, as well as the receipt of program information, updates and consultation in respect of future changes to the program. To be eligible for PIP membership, companies must meet certain defined criteria. The applicant must be either an importer, exporter, carrier (by either highway, marine, rail or air), customs broker, courier, warehouse operator, freight forwarder or shipping agent. The applicant must also own or operate facilities in Canada that are directly involved in the import or export of goods from the U.S. Alternatively, the applicant may be a U.S. company applying for a FAST (Canada) membership. Finally, the applicant must be in “good standing”.

Companies that are ineligible to be PIP members, may still participate in the program by applying for associate status. Associates receive program information and updates and are consulted on changes to the program, but do not receive membership benefits. Among the categories of people that may be regarded as associates are associations, companies, groups, port authorities, lawyers and consultants.

MANDATORY SECURITY STANDARDS

In an October 2006 study, the CBSA’s Evaluation Division concluded that PIP’s effectiveness was inhibited by the lack of mandatory participant requirements. In response to key recommendations in the Evaluation Division’s report, standards will no longer be “recommendations” under the modernized program; instead, they will be *prerequisites* to registration. In the past, when participants were approached with recommendations by the CBSA, they had a choice regarding whether to follow the recommendation. Particularly in situations where implementing the recommendation would be expensive, PIP members could simply choose not to. Under the new program, PIP partners will be required to adhere to stricter, more defined and targeted security measures to further enhance the security of supply chains.

At a minimum, PIP members must place physical barriers or deterrents that guard against unauthorized access to cargo handling and storage facilities. All external doors, gates, windows and fences must be secured with locking devices, a criterion which could be somewhat problematic in situations where the member is not the owner of the property. Members must also have in place an employee identification system to control access to its facilities. Visitors, regardless of whether they are known to employees of the

member, must present photo identification upon arrival, have an escort and visibly display temporary identification while visiting a member's facilities. Standards are also established for lighting, parking controls, signage, deliveries and document security, among other things.

There will be consequences for failure to abide by the mandatory standards, including removal from the program.

CARGO SEALING GUIDELINES

The CBSA is currently consulting with stakeholders concerning the new requirements for the sealing of cargo containers. The initial proposal contemplates that PIP members will be required to affix high quality mechanical seals to their containers and trailers prior to shipping and these must remain continuously affixed while the goods are in transit. In particular, it is proposed that seals meeting or exceeding the current International Organization for Standardization Publicly Available Specification (ISO/PAS) 17712 Standard for Freight Containers – Mechanical Seals will be required for PIP purposes. The CBSA intends to verify the integrity of the seals upon presentation at the Canadian border.

CBSA SECURITY REVIEW AND ASSESSMENT

Another new addition to the PIP program is that the CBSA will be introducing site visits as part of the approval process. These will be performed in an effort to confirm the information provided in the applicant's security profile, as well as to review the participant's security measures and procedures and to identify any vulnerabilities in their premises, processes and procedures. Where the applicant has been validated under C-TPAT within the past two years, the CBSA may opt to forego a site visit.

CURRENT PARTICIPANTS MUST RE-APPLY

As a result of revised membership criteria, all PIP members that joined prior to June 30, 2008 are required to reapply in order to continue their participation in the program. The deadline for reapplication is December 31, 2008. Participants will need to renew their PIP membership every three years, at which time participants must provide an updated security profile and submit to a site visit by the CBSA. The CBSA has indicated that it will process applications on a "first in" basis and that current members who apply before the deadline will have their privileges (e.g. FAST) extended until the CBSA is in a position to make a final determination about their membership.

ELIGIBILITY FOR FAST TO BE BROADENED

One of the major benefits of participation in PIP is considered to be potential participation in FAST. In particular, a participant in FAST may use a designated lane (where available) at border crossings to expedite customs clearance and entry of goods into Canada. One of the criticisms raised with FAST is that it is only available to companies that are participants of both PIP as well as the Customs Self Assessment (CSA) program. A further complicating factor is that non-resident importers are not eligible to apply for participation in the CSA program. However, it appears that this may be changing. Recently, the CBSA indicated an intention to recommend a review of the FAST requirements to enter Canada, and in particular to permit PIP-only members to be eligible for FAST.

COMMENTS

While participation in PIP remain voluntarily, more and more companies involved in international trade are considering the benefits of participation. In this connection, the CBSA has been urged by stakeholders to enhance the benefits available to participants and to make these more transparent and tangible. From a drafting perspective, more and more companies involving in cross-border trade are inserting clauses into their agreements with suppliers and carriers insisting that their supply chain partners are members and fully participate in voluntary cargo security programs and related programs such as FAST. Therefore, companies not yet members of PIP should take a closer look at it and re-evaluate the benefits of participation.

[1] *Greg Kanargelidis is a Partner at Blake, Cassels & Graydon LLP in Toronto, Canada.*
Elysia Van Zeyl is an Associate at Blake, Cassels & Graydon LLP in Toronto, Canada.

Get Involved with CITBA - Join a Committee

CITBA members are encouraged to participate in one or more of its standing committees. If you are interested in getting involved, please contact the Committee Chair specified below:

Continuing Legal Ed. and Prof. Resp.	Stuart M. Rosen stuart.rosen@weil.com
Customs and Tariffs	Michael E. Murphy Michael.E.Murphy@BAKERNET.com
International Trade	Joseph W. Dorn jdorn@kslaw.com
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Membership	Kathleen W. Cannon Kcannon@kelleydrye.com
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Technology	Victor Mroczka mroczka@hugheshubbard.com
Trial and Appellate Practice	Lawrence M. Friedman lfriedman@barnesrichardson.com

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: http://www.citba.org/employment.htm.

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 http://www.citba.org/member_app.htm

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.

Please send questions or comments about this Newsletter to: Frances P. Hadfield at fhadfield@gdlsk.com.

U.S. COURT OF INTERNATIONAL TRADE
and the
CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

Present

"Trial Practice and Skills in the CIT"

Thursday, October 16, 2008
2-4 p.m.
U.S. Court of International trade

****CLE CREDIT AVAILABLE****

Panel: **Judge Evan Wallach, U.S. Court of International Trade**
Lawrence Friedman, Barnes, Richardson & Colburn
Michael O'Rourke, Esq., Rode & Qualey
Edward Kenney, Department of Justice, International Trade Field Office
Jason Kenner, Department of Justice, International Trade Field Office

Wine and cheese reception to follow at the Court

Seminar Price: **$80 members**
$90 non-members

A discount of 15% is offered from the course fee to law students attending an accredited law school, solo attorneys admitted to the Bar less than two years, government attorneys, attorneys who work for non-profit or legal services organizations, and unemployed attorneys.

R.S.V.P. with checks payable to "CITBA" by October 10, 2008 to:
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"Trial Practice and Skills in the CIT" Seminar
October 16, 2008

[Names]_____ [Firm/Organization]_____

Customs and International Trade Bar Association

July 30, 2008

VIA FACSIMILE

Senator Max Baucus
Chairman
Senate Finance Committee
511 Hart Senate Office Bldg.
Washington, DC 20510

Senator Charles E. Grassley
Ranking Member
Senate Finance Committee
135 Hart Senate Office Bldg.
Washington, DC 20510

Re: Support for Reauthorization of Trade Adjustment Assistance

Dear Senator Baucus and Senator Grassley:

The purpose of this letter is to express the strong support of the Customs and International Bar Association (CITBA) for reauthorization of Trade Adjustment Assistance (TAA) and, equally important, for much needed reforms to improve the TAA administrative process and assure that it functions efficiently.

Founded more than 90 years ago, CITBA is a nationwide bar association composed of lawyers practicing primarily in the area of customs and international trade law. CITBA members regularly provide legal representation to claimants under the TAA for Workers program and the TAA for Farmers and Fishermen program in cases before the U.S. Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit. This representation is nearly always undertaken without charge, as part of lawyers' professional obligation to offer pro bono legal services to those unable to afford a lawyer. CITBA has also sponsored continuing legal education programs on TAA and has published a TAA Handbook to help train attorneys in handling TAA cases and representing TAA claimants.

TAA has been an integral part of U.S. trade law and policy since the Trade Expansion Act of 1962. This reflects a broad consensus that the United States, to pursue trade and investment policies that benefit the U.S. economy as a whole, must maintain a strong commitment to assisting individuals adversely affected by increased competition from abroad. Although the TAA program is intended to meet that commitment, the existing process for determining eligibility for TAA benefits has serious procedural flaws and needs reform.

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

In their published court decisions in cases hearing appeals against denials of TAA benefits, CIT judges regularly find that the U.S. Department of Labor and U.S. Department of Agriculture do not have adequate standards for conducting thorough investigations and compiling appropriate evidence. This problem is exacerbated because, under the current statute, the CIT does not have the authority to overturn agency determinations and, instead, can only remand the cases to the agency for further proceedings. The result has often been serious delays in providing TAA benefits to workers, farmers, and fishermen who are in desperate need of assistance.

Reform of TAA should address these flaws. At the agency level, the Secretaries of Labor and Agriculture should be required to develop better standards for investigations, including improved data requirements and criteria for determinations. In court cases, the standard of review should be changed from the existing standard under which the agency's determination is to be affirmed if it is "supported by substantial evidence." Instead, the agency's determination should be affirmed only if it is "supported by substantial evidence, based on a reasonable investigation, and otherwise in accordance with law." By holding the agencies to a higher standard, this reform would require the agencies to conduct their investigations in a proper manner the first time, instead of after multiple remands ordered by the CIT or the voluntary remand frequently requested by the agency. In addition, the CIT should be given statutory authority to reverse the agency's determination and order the agency to certify the claimants for TAA benefits, instead of merely remanding the case to the agency for further proceedings.

These proposed changes would streamline the process for determining eligibility, thereby enabling workers, farmers, and fishermen to receive the assistance they need in a more timely fashion. Moreover, the improvements in the TAA process should be addressed as a legislative priority this year, irrespective of whether Congress acts this year on the agenda now under discussion of a major expansion of TAA benefits.

CITBA therefore urges Congress and the Administration to reauthorize TAA and to amend the Trade Act of 1974 to address the issues referenced above. CITBA remains prepared to work with Congress and the Administration to insure a fair and equitable administration of the TAA program so that persons adversely affected by shifts in international trade and investment receive appropriate assistance in a timely fashion.

Respectfully submitted,

[signed]

Patrick C. Reed
President

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