

Upcoming Programs

April 3, 2019 - Women in Leadership: A Fireside Chat with Kathleen Cannon, Tina Kimble, and Vanessa Sciarra

CITBA and the United States Court of International Trade's Historical Society cordially invite you to a Special Presentation in celebration of the 50th Anniversary of the James L. Watson Courthouse: CITBA and the Association of Women in International Trade (WIIT) invite you to a Fireside Chat with three leaders in international trade law and policy on navigating successful international trade careers while taking on personal and professional leadership roles.

Featuring:

- Kathleen Cannon, D.C. Office Managing Partner, Kelley Drye & Warren LLP and CITBA President
- Tina Kimble, Director, U.S. Government and Regulatory Affairs, Tata Steel Europe
- Vanessa Sciarra, Vice President for Legal Affairs and Trade & Investment Policy

Moderated by: Evelyn Suarez, Founder, The Suarez Firm and Past WIIT President

Place: Kelley Drye & Warren LLP, 3050 K Street, NW, Suite 400, Washington, DC 20007

Time: 5:00 pm to 7:00 pm

Wine and cheese reception to follow, hosted by Kelley Drye & Warren LLP

Price:

CITBA and WIIT Members - Free
Non-Members - \$25

Registration available [here](#).

Please visit the CITBA website (www.citba.org) for information about upcoming programs.

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Past CITBA Events

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February 27, 2019: CITBA Winter Luncheon

CITBA welcomed speaker Nazak Nikakhtar, Assistant Secretary, Industry and Analysis, and Acting Under Secretary of the BIS, and a panel discussion on Section 232, Imports, and National Security.

February 14, 2019: Young Partners in Trade Brown Bag

CITBA's Young Lawyers Committee hosted a panel of attorneys who were recently named partner at their respective firms to discuss how they made the transition professionally and personally, the benefits and drawbacks, value of mentors within a firm setting, and their career trajectories.

February 12, 2019: Managing 337 Litigation in Multi-Jurisdictional Disputes

CITBA welcomed a conversation on experiences and observations related to the challenges and complexities associated with Section 337 investigations at the ITC.

Announcements

NEWS FROM THE CLERK OF THE COURT OF INTERNATIONAL TRADE



*By Stephen Swindell and Scott Warner**

**Stephen Swindell is the Supervisor and Scott Warner is the Operations Manager for Case Management at the Court of International Trade.*

Attorney Renewal Registration Season is Here!

Per USCIT Rule 74(e)(1), all attorneys admitted to the Court prior to January 1st, 2018 are required to submit an Attorney Renewal Registration Form to the Court by June 1st, 2019. Non-federal government attorneys are also required to submit a \$50 renewal fee. Those attorneys who do not renew will be removed from the Court's bar roll and will have to apply for admission as a new member. Further information and instructions on how to renew your registration can be found on the Court's website at: www.cit.uscourts.gov and if you have any questions about the process, please call the Court's Admission Office at: (212) 264-2812. Happy renewing!

Third-Party Services, Secondary Email Addresses and Confidential Information

Sharing CM/ECF filing credentials and PACER account credentials with third-party service providers or designating such a provider as a secondary recipient of a Notice of Electronic Filing or Notice of Docket Activity (NEF/NDA) will give them access to confidential case information and documents in violation of Court orders and/or Court rules. As always, you are urged to use caution in your computer security practices to ensure that such information and documents are not disclosed to unauthorized parties. Also, PACER fee-exempt users should not share the documents they obtain from PACER

Federal Circuit and CIT Case Summaries

*By Claudia Burke**



* *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.*

Antidumping/Countervailing Duties

Commerce May Rescind Antidumping Proceeding Based Upon The Initiator's Lack Of Credibility. *New Mexico Garlic Growers Coalition v. United States* [Barnett, J.]. On November 26, 2018, the Court of International Trade affirmed the decision of the Department of Commerce to rescind an administrative review of an antidumping duty order because the entity requesting the review misrepresented information and therefore was not credible. Considering an issue of first impression, the court held that Commerce possesses expansive inherent authority to protect the integrity of its own review proceedings, and recognized for the first time Commerce's authority to make credibility determinations in determining whether to continue administrative antidumping proceedings.

Customs

Federal Circuit Affirms Court of International Trade's Decision Rejecting Importer's Claim that Fiber Optic Telecommunications Network Equipment is Not "Optical" for Tariff Classification Purposes. *ADC Telecommunications, Inc. v. United States*, Appeal No. 18-1316. On February 19, 2019, the Court of Appeals for the Federal Circuit affirmed the Court of International Trade's decision in a classification dispute brought by an importer. The court held that the fiber optic telecommunications network equipment at issue, imported from Thailand, was properly classified for tariff purposes as "other optical appliances and instruments" under subheading 8013.80.90, Harmonized Tariff Schedule of the United States (HTSUS), with a duty rate of 4.5% *ad valorem*, rather than as "machines for the reception, conversion and transmission or regeneration of voice, images or other data" under subheading 8517.62.00, HTSUS, duty-free. The Court determined that because the goods are optical instruments of Chapter 90, HTSUS, they are statutorily excluded from the provision claimed by the importer. As part of its analysis, the Court rejected the notion that optical instruments must in all cases permit or enhance human vision and held that these goods, which operate solely with infrared light, qualify as optical instruments for tariff classification purposes.

Court of International Trade Denies Defendant Importer's Motion for Summary Judgment on Statute of Limitations Issue. *United States v. Greenlight Organic, Inc.* [Choe-Groves, J.]. On November 29, 2018, the Court of International Trade denied a

motion for summary judgment submitted by Greenlight Organic, Inc. (Greenlight) in the government's civil penalty action based on Greenlight's false and material statements made while importing athletic wearing apparel. Greenlight had argued that the government's case was time-barred by the statute of limitations because the complaint was filed more than five years after the government had learned of, or should have learned of, Greenlight's fraudulent undervaluation and misclassification of merchandise. The government responded that (1) the statute of limitations is triggered upon discovery of the fraud, and (2) the fraud was not discovered until the government received falsified invoices from Greenlight - *i.e.*, less than five years before the government brought the action. The court did not address the statutory interpretation issue, but denied Greenlight's motion because there were disputes of material fact about the time frame within which fraud was discovered.

Court of International Trade Denies Saccharin Importer's Motion for Summary Judgment in \$84 Million Transshipment Customs Penalty Case. *United States v. Univar USA Inc.* [Barnett, J.]. On November 13, 2018, the Court of International Trade denied a saccharin importer's motion for summary judgment in an action to recover unpaid antidumping duties and a monetary penalty under 19 U.S.C. § 1592. The government alleges that the importer was grossly negligent, or alternatively negligent, when it misrepresented the country of origin of 36 entries of imported saccharin to be Taiwan, despite the fact that the product was manufactured in China. The government further alleges that, by claiming Taiwan instead of China as the country of origin, the importer unlawfully avoided more than \$36 million in antidumping duties. The court found that disputes of material fact regarding the origin of the saccharin and the importer's level of culpability precluded summary judgment. The case will now proceed to a jury trial.

Other

Court of International Trade Denies Motion for Stay Pending Appeal of Preliminary Injunction Suspending Fish Imports from Mexico. *Natural Resources Defense Council v. Ross* [Katzmann, J.]. On October 22, 2018, the Court of International Trade denied the government's request for a stay pending the appeal of a preliminary injunction ordering the government to ban certain fish products from Mexico. The court rejected the government's evidence that the injunction was harming the United States' relationships with its trading partners and its position that the court lacked jurisdiction to impose the embargo. The court concluded that, because the government had implemented the injunction, it could not demonstrate harm as a result of the court-ordered embargo, and its foreign relations concerns were merely speculative.

Feature Article

The White House's Efforts in The Most Prominent Section 301 Case to Date

by Sorana Ban*

*Sorana Ban is an attorney in the Dallas office of Clark Hill Strasburger. She can be reached at: Sorana.Ban@clarkhillstrasburger.com.

Section 301 Case for Fair Practices

The United States appears to be seeking to decelerate China's global influence, almost two decades after its admission to the World Trade Organization and only a few years shy of achieving the *Made in China 2025* strategic plan.

In 2018, the United States conducted an investigation of Chinese policies under Section 301 of the Trade Act of 1974. The Office of the United States Trade Representative ("USTR") issued a detailed report claiming that China uses a variety of practices in an effort to force technology transfers from United States companies to Chinese entities while, at the same time, conducting and sponsoring cyber-attacks into United States public and private computer systems in an effort to uncover trade secrets. In response to China's economic aggression, the White House increased its tariffs on \$50 billion worth of Chinese goods and applied another round of 10% tariff on another \$200 billion of Chinese goods. The 10% tariff was set to hike to 25% by March 1, 2019, but, as of this writing, it is still on hold while trade talks are in progress.

Since May 2018, the two governments have been involved in high-level trade talks. While China has reportedly agreed to augment its purchases of U.S. agricultural, energy and industrial products, the issues related to the Section 301 case also involve the more sensitive topics of intellectual property theft, trade secrets misappropriation and the inclusion of verification and enforcement provisions. These continue to be the most contentious topics between the two countries.

Structural Reforms to China's Handling of Trade Secrets

Foreign companies interested in entering the Chinese market cannot ignore the USTR's report describing China's technology transfer policies, state-funded acquisition of foreign companies' intellectual property, or discriminatory licensing requirements. Although the Chinese government has refused to recognize the validity of USTR's findings, U.S. officials remain confident that Chinese manufacturers have the skill, the leverage, and the protection both to make copycat products and to poach proprietary technology. The ongoing talks center around the United States' demands for structural changes related to China's handling of U.S. and other foreign intellectual property. U.S. negotiators hope to convince Beijing to expose and punish the Chinese entities and individuals who steal technology from foreign companies.

In response to United States' complaints, China recently passed a foreign-investment law meant to address the theft of trade secrets. The new law replaces three separate statutes governing foreign companies, and adds language that threatens criminal prosecution against those divulging foreign corporate secrets. The question remains though whether the changes in the Chinese legal environment will be enforced and how they will eventually be reflected in everyday business transactions. With several layers of government officials, including at the central, provincial, and local levels, foreign companies must trust that the new laws or treatise will be consistently enforced across the country.

Practical Considerations for Foreign Companies

With the parties making modest concessions, trade negotiations between the two countries continue. Despite resolute attitudes, the negotiators hope to have an outcome by the end of April, 2019. Regardless of the results on paper, foreign companies must consider whether - and, if so, how - their business in China will change in the coming months. Skeptics warn of Chinese bureaucratic hurdles and aversion to change well-

established practices. Until shown otherwise, foreign companies might well persist in sheltering their most valued intellectual property and trade secrets from their Chinese partners. Some of the techniques preferred by foreign companies with presence in China have been the use of inexpensive hardworking labor forces in other Asian countries, the manufacturing of most components elsewhere for final assembly of the completed product in China, or the implementation of rigorous processes that isolate the highly-sensitive processes from Chinese partners.

Conclusion

Initially, any agreement between the United States and China will mostly leave more questions than answers. The months to come may test not only the relationship between the two governments, but also the business environment in the United States, China and elsewhere. At the end of these negotiations, Section 301 would likely have proven itself to be a convenient tool for the White House. Perhaps, next on the Administration's to-do list - the European Union.

CITBA ONLINE

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<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/home>.

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: [Join CITBA or Renew](#).

Are you already a member, but late in paying your dues? Need to update your contact information? Get current today and enjoy the benefits of membership. Contact William J. Maloney at wmaloney@strtrade.com for details.

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