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Customs and International Trade Bar Association Quarterly Newsletter

Volume 7, Issue 3

Summer/Fall 2009

CITBA & Related News

UPCOMING PROGRAMS

Fall Meeting and Dinner

On October 20, 2009, CITBA will hold its Fall Meeting and Dinner at The Princeton Club, located at 15 West 43rd Street in New York. The speaker for this event will be Cheryl Falvey, General Counsel for the Consumer Products Safety Commission. Registration Information for this event is attached below.

U.S. CIT Historical Society Program

On October 20, 2009, The Historical Society of the U.S. Court of International Trade will host a panel entitled "Customs Litigation Before 1890." The panelists for this program include:

Hon. Thomas J. Aquilino, Jr., Senior Judge
Patrick Reed, Simons & Wiskin
Professor Jason Mazzone, Brooklyn Law School

This program is being offered free of charge and one credit of CLE is available. The panel will discuss the early history of the methods of obtaining judicial review of administrative action in customs law before the creation of the Board of General Appraisers in 1890, including actions in assumpsit against the Collector of Customs and the Supreme Court's 1836 decision in *Elliot v. Swartwout*. Pre-registration by October 15, 2009 is required. Registration Information for this event is attached.

Trial Skills Seminar

On October 20, 2009, beginning at 3pm, The U.S. Court of International Trade and CITBA will present "When is a Paint Roller Not a Paint Roller? When it is a Paint Pump..." Trial Skills: Litigating Classification Cases before the Court of International Trade. The panelists for this program include:

Presiding: Chief Judge Jane A. Restani, U.S. Court of International Trade
Panel: Lawrence Friedman, Barnes, Richardson & Colburn
John Peterson, Neville Peterson
Edward Kenney, Department of Justice, International Trade Field Office
Jason Kenner, Department of Justice, International Trade Field Office

Registration Information for this event is attached below.

International Law Weekend

The annual International Law Weekend conference will take place Thursday, October 22, through Saturday, October 24, in New York City. The Thursday evening program will be held at the House of the Association of the Bar of the City of New York, 42 West 44th Street, and the Friday and Saturday programs will be held at Fordham Law School, 140 West 62nd Street. CITBA is a cosponsor of the conference, thereby allowing CITBA members to attend all panels during the conference free of charge.

CITBA is presenting a panel Friday morning, October 23, on "Trade and Climate Change" from 9:00 am to 10:30 am, at Fordham Law School. The program will include discussion of the pending legislation in Congress on climate change and its implications for environmental law, international trade law, and businesses faced with compliance issues. The speakers will be Professor Steve Charnovitz of George Washington Law School, Laura Campbell of Environmental Law International, CITBA's Gary Horlick, and Meg McDonald of Alcoa. The moderator will be CITBA's Professor Claire Kelly of Brooklyn Law School. This panel is co-sponsored with the Dennis Block Center for the Study of International Business Law at Brooklyn Law School, the International Trade Law Committee of the American Branch of the International Law Association, and the International Trade Committee of the Association of the Bar of the City of New York.

The conference also features a panel on trade regimes and domestic regulatory policy on Friday from 4:00 to 5:30 pm. 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's website includes information about the conference and a link to the American Branch website.

Forum on Import Compliance

From October 26-27, 2009, The American Conference Institute, in partnership with the Customs and International Trade Bar Association, will hold the 5th Advanced Forum on Import Compliance. This year's revised agenda will include the latest information on:

- § Preparing for focused assessments and single issue audits
- § Improving valuation and classification process to minimize duty
- § Increasing special import program benefits, including FTAs, Duty Drawback, Chapter 98 Provisions and GSP
- § When to file a prior disclosure and how CBP evaluates them
- § Meeting *Lacey Act* expanding requirements to minimize enforcement risks

This year's program also features eight senior government speakers who will provide crucial insights into enforcement activities and regulatory initiatives impacting your clients' operations.

The program will also provide the opportunity for networking with senior corporate customs compliance executives from companies including Abbott, ATC Technology, Covidien, Del Monte, Delphi, Dresser, DRS Technologies, DuPont, FMC, General Electric, Hasbro, Hitachi, IBM, Mattel, Nestle, Pfizer, Sojitz, US Steel, and Williams-Sonoma.

For more information, please call 1-888-224-2480 or visit online at: www.AmericanConference.com/import

ANNOUNCEMENTS

Andrew P. Vance Memorial Writing Competition

CITBA is pleased to announce that the first prize in the 2009 Andrew P. Vance Memorial Writing Competition has been awarded to James S. Templin of John Marshall Law School, for his paper entitled University Research Under Siege: How the War on Terror Has Placed Academic Freedom Under Fire. The paper examines how university research has been found to violate export control laws. Mr. Templin will receive the \$1000 first prize award at this fall's CITBA dinner on October 20th at the Princeton Club.

The winner of this year's \$500 second prize is Ryan M. Vanden Brink of Lewis and Clark Law School for his paper entitled Competitiveness Border Adjustments in US Climate Change Proposals Violate GATT: Suggestions to Utilize GATT's Environmental Exceptions.

Both papers will be posted on CITBA's website and will be considered for publication in the Brooklyn Journal of International Law.

The Vance Competition is one of CITBA's most successful ongoing activities. Each year, the competition recognizes the two best papers by law students on a topic relevant to customs and international trade law. The competition is conducted under the auspices of Brooklyn Law School, with a committee of CITBA members judging the papers on the basis of the quality of research, analysis, and writing. The competition

was first held in 1999 and has attracted some 150 students. This year 15 papers were submitted.

The Vance Competition honors the memory of Andrew P. Vance, a past president of CITBA and distinguished public servant and practitioner. Andy passed away in 1997 after working more than forty years in the field of customs and international trade law. For many years, he served as Attorney-in-Charge of what is now the International Trade Field Office at the U.S. Department of Justice in New York. He then became a partner in the New York office of Barnes, Richardson & Colburn. Throughout his career, he became a mentor for many members of the customs and international trade bar, and he earned the respect and affection of countless lawyers, judges, and scholars.

The Vance Competition is funded through the generous contributions of CITBA members and their law firms. Although it has a substantial endowment, the Vance Competition is not self-sustaining and depends on continued annual contributions. CITBA's annual dues notice includes a line item for contributions to the Writing Competition fund, with a \$25 contribution encouraged.

CITBA Collaboration with NYCBA International Trade Committee

During the past year CITBA has collaborated on several programs with the International Trade Committee of the New York City Bar Association, including a seminar on regional trade agreements and a speaker on export controls. With a view to continuing this collaboration, the International Trade Committee invites CITBA members to apply for committee membership. The Committee addresses and monitors international investor protection, developments in the World Trade Organization and issues relating to trade in goods and services, including multilateral and bilateral trade agreements such as NAFTA and dispute settlement of cases brought under such agreements. All membership inquiries should be directed to:

Helena D. Sullivan (Committee Chair)
Barnes Richardson & Colburn
475 Park Ave S, Fl 25
New York, NY 10016
Phone: (212)725-0200
helenadsullivan@yahoo.com

CITBA Recognizes Longtime Members

At our annual dinner in April, CITBA recognized and congratulated a number of CITBA members who were admitted to the Bar of the United States Customs Court (now the Court of International Trade) forty or more years ago, including a small number of members who were admitted to the Bar of the United States Customs Court fifty or more years ago. A copy of the CITBA resolution is attached.

Feature Articles

Millions of Dollars in Retaliatory Duties Imposed on European-Origin Products May Be Subject to Refund Following a Decision by the U.S. Court of International Trade

By: Neil R. Ellis and Jill Caiazzo

Since July 1999, the United States has imposed 100 percent duties on a wide variety of European-origin items in retaliation for the failure of the European Communities (EC) to comply with rulings by the World Trade Organization (WTO) in the *EC – Beef Hormones* dispute. Affecting imported items such as meat, cheese, juice, chocolate, jam and yarn, these retaliatory duties are intended to impact \$116.8 million worth of trade from the EC annually. However, a recent decision by the U.S. Court of International Trade (CIT) in *Gilda Industries, Inc. v. United States*, Slip Op. 2009-58 (June 16, 2009), suggests that the U.S. government may have lacked the authority to collect these retaliatory duties since July 2007. Importers of European-origin products subject to these retaliatory duties should therefore evaluate whether they are entitled to refunds for duties paid since that

date. Importers of products subject to other long-standing retaliatory duties imposed by the United States may also consider carefully assessing their rights in light of this new judicial precedent.

Background

The *EC – Beef Hormones* dispute began in 1985 when the EC banned imports of meat from animals treated with certain growth hormones, including such products imported from the United States. Although the United States successfully challenged this ban before the WTO, the EC refused to comply with the WTO's decision by lifting the import ban. As a result, the WTO authorized the United States to retaliate against the EC by suspending the favorable tariff treatment otherwise due to products of European origin. The WTO determined that the amount of retaliation by the United States could impact up to \$116.8 million worth of

Select Products Placed on July 1999 Retaliation List in Response to *EC – Beef Hormones* Dispute

- Fresh, chilled or frozen bovine meat
- Fresh, chilled or frozen swine meat/carcasses
- Roquefort cheese
- Onions and shallots
- Truffles
- Dried carrots
- Toasted bread and rusks
- Fruit juice
- Roasted chickory and other coffee substitutes
- Mustard
- Prepared or preserved tomatoes
- Soups
- Single yarn
- Chocolate
- Lingonberry and raspberry jam
- Glues and adhesives

*Application of retaliatory duties varies depending
on specific European country of origin*

trade by the EC annually.

In July 1999, the United States, through the Office of the U.S. Trade Representative (USTR), issued a "retaliation list" in response to the EC's refusal to lift the import ban. This list targeted a variety of European-origin products with 100 percent ad valorem duties. From that point forward, these products were subject to retaliatory duties upon their entry into the United States.

Decision in Gilda

In *Gilda*, an importer of products identified on the July 1999 retaliation list challenged the ability of the United States to maintain the retaliatory duties imposed as a result of the *EC – Beef Hormones* dispute.

At issue in *Gilda* was the statutory scheme governing the continuation of retaliatory duties beyond an initial four-year period. The relevant statute provides that, if a retaliatory action has been in effect "during any 4-year period," representatives of the domestic industry benefiting from the action must, within the last 60 days of the four-year period, submit to USTR a formal request for continuation of the action. To assist the domestic industry in satisfying this requirement, the statute further provides that USTR must notify the domestic industry of the impending termination of a retaliatory action. If the domestic industry does not submit the required request to USTR, the retaliatory action "shall terminate at the close of such 4-year

period.”

The importer in *Gilda* claimed that this statutory requirement had not been met with respect to the July 1999 retaliation list instituted in response to the *EC – Beef Hormones* dispute, resulting in automatic termination of this retaliatory action. The importer provided evidence that, although the domestic industry benefiting from the July 1999 retaliation list (*i.e.*, the domestic beef industry) had requested continuation of the retaliatory action before the end of the initial four-year period in July 2003, the domestic industry had failed to request continuation before the end of the second four-year period in July 2007. The importer argued that this failure resulted in the termination, by operation of law, of the retaliatory duties imposed against the products identified on the retaliation list. As a result, the importer requested that the court order a refund of all retaliatory duties paid by the importer after July 2007.

The *Gilda* court agreed with the importer, holding that the retaliatory list terminated by operation of law on July 29, 2007. In reaching this conclusion, the court rejected the two principal statutory interpretations advanced by USTR. First, the court found that the statute plainly required the domestic industry to request continuation of the retaliatory action before the end of *each* four-year period following imposition of the action, whereas USTR had argued that this requirement applied only to the initial four-year period.

Second, the court found that USTR’s failure to provide the domestic industry with notice of the impending termination of the retaliatory action in July 2007 (which was the result of USTR’s first erroneous statutory interpretation) did not absolve the domestic industry of its obligation affirmatively to request continuation of the retaliatory action. The court observed that, while other aspects of the statute were expressly contingent upon USTR’s consultation with the domestic industry, the automatic termination provision for a retaliatory action was not. As a result, the court found that USTR did not have the discretion to delay the operation of a termination provision intended by Congress to be automatic and non-discretionary.

Because USTR did not have the authority to maintain the retaliation list after its automatic termination in July 2007, the *Gilda* court concluded that the importer’s relevant entries should have been liquidated without the 100 percent retaliatory duties after that date. The court therefore ordered U.S. Customs and Border Protection to issue the importer a refund of the retaliatory duties collected on these entries.

Implications for Importers and Domestic Industries

The United States has appealed the *Gilda* decision to the U.S. Court of Appeals for the Federal Circuit (Case No. 2009-1492), where the case is pending. As a result, the implications of *Gilda* for importers and domestic industries are as yet unclear. However, if the *Gilda* decision is upheld on appeal, it will have multiple implications for importers and domestic industries affected by retaliatory duties.

Most obviously, other importers of products on the July 1999 retaliation list may also be eligible for refunds of retaliatory duties paid after July 2007. According to documents filed in the *Gilda* case, there may be as many as 200 importers potentially eligible for refunds of millions of dollars in retaliatory duties paid since July 2007. Depending on an importer’s circumstances, it appears that refund requests may be sought either through protests of liquidated entries or through challenges brought under the CIT’s residual jurisdiction.

An additional consideration for importers is the possibility that USTR may lack statutory authority to impose new retaliatory duties to replace, in whole or in part, the July 1999 retaliation list. This argument was raised by a plaintiff-intervenor in the *Gilda* case but not clearly resolved by the court. For example, importers of Italian-origin mineral water – a product newly targeted for retaliatory duties as a result of the proceedings in the *Gilda* case – may have grounds to challenge the imposition of these duties. Resolution of this issue will likely hinge on the interpretation of the statutory language permitting USTR to “take action” to enforce U.S. rights under the WTO Agreements.

Further, importers of products subject to retaliatory duties as a result of WTO disputes other than the *EC – Beef Hormones* dispute could likewise be eligible for duty refunds. The court’s decision in *Gilda* announced a statutory interpretation generally applicable to all retaliatory actions taken by the United States in response to a U.S. trading partner’s failure to adopt WTO decisions to the detriment of the United States. To the

extent that the United States has had other long-standing retaliatory actions in place, these actions may also have been terminated by operation of law due to a failure to follow the procedures required for their continuation. Importers affected by an such actions, however, would have to determine if they could still bring refund claims in light of the applicable statute of limitations.

Finally, with respect to domestic industries, the *Gilda* case cautions vigilance with respect to the procedures required to maintain advantageous retaliatory duties. The court expressly noted that domestic industries benefiting from retaliatory duties must monitor the end date of each four-year period following imposition of these duties, so as to be able to request continuation of the duties regardless of whether USTR issues a notice alerting the public to their impending termination.

Given the multiple potential implications of the *Gilda* decision, affected importers and domestic industry members should consider taking an active role in the appeal before the CAFC. Motions to file amicus curiae briefs in this appeal must be filed, with proposed briefs, no later than October 20, 2009

Neil R. Ellis is a partner with Sidley Austin LLP in Washington, D.C.

Jill Caiazza is an associate with Sidley Austin LLP in Washington, D.C.

Checking and Getting Off the BIS Entity List

By: Peter A. Quinter

The United States Government has issued a bewildering number of lists of those persons, companies, and organizations whom it has determined “pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States.” See, e.g., 15 CFR 744.11(c). The Department of Treasury, through its Office of Foreign Assets Control (OFAC), and the Department of State, through its Directorate of Defense Trade Controls (DDTC), have their Specially Designated Nationals List (SDN), the Debarred List, and the lists of persons subject to Nonproliferation Sanctions. The Department of Commerce, through its Bureau of Industry and Security (“BIS”), maintains three more lists: the Denied Persons List (DPL), the Unverified List, and the Entity List. It is the Entity List that is too often overlooked, and U.S. exporters are often investigated by and then assessed monetary penalties by BIS.

Any U.S. person, company, or organization, planning to do business with any entity on the Entity List must first obtain the appropriate license from the BIS. Remember that the BIS defines a “U.S. person” very broadly at 15 C.F.R. § 772.1, and it may include overseas subsidiaries. Doing business with an entity on the Entity List without the proper license will result in a severe monetary penalty from the BIS, and an investigation which could result in a criminal sanction. Criminal sanctions and penalties are issued regularly by the BIS against persons and companies unwittingly illegally doing business with a person or company on the Entity List.

The BIS publishes the names of certain foreign persons – including businesses, research institutions, government and private organizations, individuals, and other types of legal persons - that are subject to specific license requirements for the export, re-export and/or transfer (in-country) of specified items. These persons comprise the Entity List, which is found at Supplement No. 4 to Part 744 of the Export Administration Regulations (EAR), and persons are added pursuant to the BIS regulations at 15 CFR 744.11. As you would expect, there are lost of names from Iran and Pakistan, but also Germany, Hong Kong, Ireland, the United Kingdom, and Singapore. Hence, screening such parties against the Entity List should be part of a pre-export due diligence activity of any U.S. exporter.

It is often mistakenly believed, even among international trade attorneys, that it is legally prohibited to do business with an entity on the Entity List. Even though the BIS considers that transactions of any nature with listed entities is a “red flag”, each entity on the Entity List is assigned a specific licensing requirement on the basis of the foreign policy and national security considerations associated with the entity’s designation on the

Entity List. Consequently, doing business with the entity using the correct license would make the transaction perfectly legal. The reality, however, is that BIS does not issue such licenses.

Although the Entity List has existed for over 10 years, on August 21, 2008, the BIS issued a Final Rule creating a new section 744.16 by which any entity on the Entity List may request that its listing be removed. Now, entities, usually through their attorneys, may write to the Chair, End-User Review Committee (ERC) at BIS Headquarters in Washington, D.C. to request that the entity be removed from the Entity List. The Chair is always from the Department of Commerce and is the Deputy Assistant Secretary for Export Administration. The other representatives of the ERC, with one vote each, are from the Departments of State, Defense, Energy, and Treasury. Any requests received by the Chair are distributed to the other Departments, and a vote takes place within 30 days thereafter. Deliberations and votes are confidential. Any additions to the Entity List are by majority, and any removals must be made by a unanimous vote. The decision letter to the requestor is made in writing from the Chair, but no explanation need be provided. The decision letters is a Final Agency action, and any challenge must be pursued in Federal Court.

Since the Final Rule went into effect on August 21, 2008, there have been numerous additions to the Entity List and several removals. In the removal from the Entity List of two companies located in the United Arab Emirates ("U.A.E."), the BIS stated "The ERC decision to recommend removal of these persons also took into account recent cooperation between the U.S. Government and the U.A.E. Government regarding certain end-users of concern." Hence, there are obvious political overtones to adding and removing entities from the Entity List.

Although there is no public data as to how many requests have been submitted to the ERC, or what percentage have been successful, it is this author's belief that the success rate is relatively high. That is so even though one of the challenges to getting off the Entity List is that the entity must persuade the ERC that "it is no longer engaged in the activities" that were the reason for its addition, and that the entity "is unlikely to engage in such activities in the future" See 15 CFR 744.11.

In conclusion, U.S. persons are reminded to carefully check all of the U.S. Government lists before exporting or re-exporting any item controlled by the Export Administration Regulations. The Entity List is often overlooked, but must not be. Finally, entities on the Entity List should challenge their designation and inclusion on the Entity List.

Peter A. Quinter leads Becker & Poliakoff's Customs and International Trade Practice.

Food Crisis Needs CITBA Community Continued Support

By Terence P. Stewart

In the spring of 2008, food prices spiked at unprecedented levels and millions of people slipped deeper into poverty and closer to the point of starvation. Even in supposedly wealthier countries, working families turned to food pantries for their needs. In response, CITBA hosted a program at the Brooklyn School of Law in February 2009 to discuss the causes, effects, and a range of solutions to the food crisis. Let's hope that event was just one of many efforts by the CITBA community to address hunger and food policies.

Though food prices have stabilized since their historic spike in 2008, access to affordable food persists and the forces that contributed to skyrocketing costs remain. In June 2009, the United Nations raised its estimate of the number of chronically hungry people worldwide to more than one billion for the first time, which equates to roughly one in six people being hungry.

The expertise of experience of trade practitioners is certainly needed in these debates. Just as importantly, the immediate needs of the hungry here at home and around the world are opportunities for all of us to lend a

hand. In the Washington area, the Capital Area Food Bank, an anchor agency for dozens of food pantries is in the second year of a campaign called "Outlaw Hunger," which harnesses the energy and giving potential of the region's legal community for a four-week fundraiser and food drive. Last year's campaign provided 162,000 meals to people in the Washington area. This year's campaign will be getting underway soon. Check the [CAFB website](#) to learn more. Presumably, there are similar outreach efforts in other cities across the country. We would encourage individuals and firms with members within CITBA to team up with their local food banks or other charitable organizations to help those in need in your communities. For those able and interested there are also various international organizations focused on raising contributions for food distributions to those in need around the world. One obvious candidate is the [UN World Food Program](#) which is largely based on private sector donations. A website created last year – [the Silent Tsunami Campaign](#) – has a range of information about the food crisis and ways to help.

While the economic turmoil of the past year has eclipsed the food crisis as an item of news focus, in some ways the resulting job losses, declines in wealth, and financial tumult have worsened the food crisis. For the 2.5 billion people who live on two dollars a day or less, the struggle to reconcile needs with income is a matter of life and death. Another food price hike could add hundreds of millions more to this desperate group. Here in the United States, unemployment has risen markedly – reaching 9.7 percent in August 2009, the highest in 26 years. With more people out of work, parents are experiencing increasing difficulty feeding their families. The number of people needing food assistance has increased dramatically just as charitable giving has been reduced because of the economic recession.

In addition, the global recession has diverted a lot of resources to short-term economic stimulus activities, such as infrastructure improvements and shoring up various sectors of national economies. Under the circumstances, it is harder to channel funds to agriculture research. However, as we learned in 2008 the failure to maintain previous levels in investment in this area was a factor in crop failures due to pests and environmental changes. There will certainly be threats to successful harvests in the future. Are we doing all we can to prevent them or to mitigate their effects today?

The economic crisis has also brought to light the exposure tens of millions people have to the interconnectedness of global market forces and government policies. According to the U.N. Food and Agriculture Organization (FAO), "growing linkages between the agricultural sector and the energy, financial and currency markets [now make] food prices increasingly vulnerable to shocks." In essence, whether a poor family in the Philippines can afford their daily rice may depend on the decision of commodity trader in London or an energy official in Washington. This highlights the need for a combination of multilateral cooperation and effective unilateral mitigation to bring order to the instability of food pricing.

The policy choices for addressing market imbalances are not without complication or political controversy. For example, international trade is at once hailed as the answer to and the cause of the challenges in pricing food at affordable levels. Consider how export bans or export taxes, used by many countries to conserve domestic sources of food staples, has been criticized for contributing to the further escalation of food prices in 2008. For countries who engaged in imposing export limits or export taxes, the rationale was usually straightforward – ensuring adequate supplies of food for the producing country's population, particularly for key commodities like rice. These tensions are not presently resolved through WTO rules which in fact permit such limits to be imposed in certain circumstances. The crisis led to proposals to impose some disciplines on such actions. However, with the Doha Round of trade negotiations unresolved, achieving supply-and-demand equilibrium remains an important matter for governments around the world.

Biofuels also fit into broader energy and environmental goals. Some non-governmental organizations have cited the surge in biofuel production as a driver in the acceleration of food commodities prices. Whatever biofuels' exact role in increasing food costs, energy, environmental, and agricultural policies are now linked as never before as policy makers are just beginning to consider this delicate balance, the volatility in food supplies, and the prices created by imbalance.

These and other questions are still the topics of discussion more than they are the focus of coordinated action. It could take years to master the art of producing and pricing food for maximum affordability.

Remember that the food crisis of 2008 has not gone away. It has changed forms amid in the economic crisis and slipped off the front page of the press even as the immediate needs for assistance have increased. We can each make a difference. We encourage all of our colleagues in the bar to be involved in any way you can.

Terry Stewart is Managing Partner of Stewart and Stewart in Washington, DC and a former president of CITBA.

CITBA Online –

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



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About CITBA

About CITBA

The Customs and International Trade Bar Association (CITBA) was founded in 1926. Its members are attorneys who are interested in the field of customs law, international trade law and related matters.

CITBA members represent United States importers, exporters and domestic producers with matters that involve the United States customs laws, anti-dumping and countervailing duty law, safeguards, export licensing, other miscellaneous international trade laws (e.g., GSP), and related laws and regulations of other U.S. federal agencies concerned with international commerce.

Meetings are held at least twice per year, usually in Washington, DC and New York City. A number of seminars are conducted throughout the year, concerning various matters of interest to the membership.

Membership is open to all attorneys admitted to practice in any country and to law students. If you are interested in becoming a member of CITBA, please click here to Join CITBA. Five classes of membership are available: Active, Honorary, Associate, Retired, and Student. The classes of membership are described in Article I, Sections 1 through 6 of the CITBA By-laws.

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.php>.

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/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.

The CITBA Quarterly Electronic Newsletter is published as a free service for members of the Customs and International Trade Bar Association. The Newsletter is for general information only and is not legal advice for any purpose. Neither CITBA and its officers and members nor Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt, LLP assume liability for the accuracy of the information provided.

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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

**“When is a Paint Roller Not a Paint Roller? When it is a Paint Pump...”
Trial Skills: Litigating Classification Cases Before the Court of International Trade**

Thursday, October 20, 2009
3-5 p.m.
U.S. Court of International Trade

****CLE CREDIT AVAILABLE****

Presiding: Chief Judge Jane Restani, U.S. Court of International Trade
Panel: Lawrence Friedman, Barnes, Richardson & Colburn
John Peterson, Neville Peterson
Edward Kenney, Department of Justice, International Trade Field
Office
Jason Kenner, Department of Justice, International Trade Field
Office

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 15, 2009 to:
Beth Ring, Esq.
Sandler, Travis & Rosenberg, P.A.
551 Fifth Ave., Suite 1100
New York, N.Y. 10176
Fax: 212-883-0068
Email: nkoosau@strtrade.com
“Trial Skills Seminar”**

[Names]_____ [Firm/Organization]_____

**CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION
FALL MEETING AND DINNER**

Date: October 20, 2009
Place: The Princeton Club
15 West 43rd Street
New York, N.Y. 10036

Cocktails: 5:30 p.m.
Dinner: 6:30 p.m.

Speaker: Cheryl Falvey, General Counsel
Consumer Products Safety Commission

Price: Members: \$95
Non-Members: \$120
Government attorneys: \$10 discount

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CITBA Fall Meeting and Dinner October 20, 2009

[Names]_____ [Firm/Organization]_____

**THE HISTORICAL SOCIETY
OF THE
UNITED STATES COURT OF INTERNATIONAL TRADE**

Presents

“Customs Litigation Before 1890”

The seminar will discuss the early history of the methods of obtaining judicial review of administrative action in customs law before the creation of the Board of General Appraisers in 1890, including actions in assumpsit against the Collector of Customs and the Supreme Court’s 1836 decision in *Elliot v. Swartwout*

**Panelists: Patrick Reed, Simons & Wiskin
Professor Jason Mazzone, Brooklyn Law School
Senior Judge Thomas J. Aquilino**

**Tuesday, October 20, 2009
2:00-3:00 p.m.**

**Ceremonial Courtroom
United States Court of International Trade
1 Federal Plaza
New York, NY 10278**

One Hour of “Area of Practice” CLE Credit Available

**The program is Free of Charge, but advance registration is required
Please register by October 15, 2009.**

**To register please notify Patrick Reed (pcr@simonswiskin.com)
USCIT Law Clerks, please register with Glenn Johnston**

**To be followed by a 2-hour CLE Program of the
Customs and International Trade Bar Association**

Customs and International Trade Bar Association

Recognition of Longstanding Members

At a duly called meeting of the Board of Directors of the Customs and International Trade Bar Association held in the City of New York, State of New York, on the Twenty-first Day of April, 2009, the following Resolution was offered by the President of the Association and unanimously adopted by all members there and then present:

WHEREAS the Customs and International Trade Bar Association, formerly known as the Association of the Customs Bar, is an association of lawyers practicing customs and international trade law before the United States Court of International Trade, formerly known as the United States Customs Court, as well as before other federal courts and before federal departments, agencies, bureaus, and offices responsible for administering the customs and international trade laws;

WHEREAS the purposes of the Customs and International Trade Bar Association include cherishing the spirit of fellowship among its members, and elevating the standards of integrity, honor, and courtesy in the legal profession engaged in the practice of customs and international trade law;

WHEREAS seven members of the Customs and International Trade Bar Association were admitted to practice before the United States Customs Court more than fifty years ago, and today these individuals remain members of the Association in good standing;

WHEREAS an additional nineteen members of the Customs and International Trade Bar Association were admitted to practice before the United States Customs Court more than forty years ago, and today these individuals remain members of the Association in good standing;

WHEREAS these longstanding members of the Association have, throughout their careers, cherished the spirit of fellowship with other members of the Association, and have epitomized the highest standards of professional integrity, honor, and courtesy;

NOW, THEREFORE, BE IT RESOLVED that the Customs and International Trade Bar Association hereby recognizes and congratulates the following members on more than fifty years of practice before the United States Customs Court and the United States Court of International Trade:

Melvin E. Lazar
Donald W. Lewis
James H. Lundquist
Donald W. Paley
David Serko
S. Richard Shostak
George R. Tuttle

AND BE IT FURTHER RESOLVED that the Customs and International Trade Bar Association hereby recognizes and congratulates the following members on more than forty years of practice before the United States Customs Court and the United States Court of International Trade:

Richard H. Abbey
Bernard J. Babb
Peter Jay Baskin
Robert E. Burke
Gail T. Cumins
Peter J. Fitch
Robert L. Follick
Harvey B. Fox
Patrick D. Gill
Brian S. Goldstein
Peter S. Herrick
Frederick L. Ikenson
Rufus E. Jarman, Jr.
Allan H. Kamnitz
Richard C. King
James S. O'Kelly
William D. Outman, II
Steven R. Sosnov
Lawrence R. Walders

AND BE IT FURTHER RESOLVED that this Resolution be spread upon the minutes of the meeting at which its adoption took place and that a copy of this Resolution be forthwith delivered to each member of the Association who is recognized and congratulated herein.

IN WITNESS WHEREOF the President of the Association, on behalf of the Board of Directors, has hereunto set his signature this 21st day of April, 2009.

President