

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

## Customs Law

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### I. Introduction

This article summarizes important developments in 2014 in customs law, including U.S. judicial decisions, trade, legislative, administrative, and executive developments, as well as Canadian and European legal developments.<sup>1</sup>

### II. U.S. Judicial Nominations and Appointments and Review of Customs-Related Determinations<sup>2</sup>

#### A. CHANGES AND NOMINATIONS

Judge Stanceu assumed duties of Chief Judge at the U.S. Court of International Trade (CIT),<sup>3</sup> replacing Judge Pogue, who assumed senior status.<sup>4</sup> Judges Carman and Eaton also assumed senior status in 2014.<sup>5</sup> President Obama nominated Jeanne E. Davidson

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\* The committee editor of this year in review article was Brandi B. Frederick, The Frederick Firm, Birmingham, Alabama. Section editors and contributors are identified in each section.

1. For developments during 2013, see Jennifer Diaz, et al., *Customs Law*, 48 INT’L LAW. 5 (2014).

2. Section editor: George R. Tuttle, III, Esq., George R. Tuttle, APC; Authors: George R. Tuttle, III, Esq., George R. Tuttle, APC; Jennifer R. Diaz, Esq., Becker & Poliakoff; Trice Stabler, Esq., Maynard, Cooper & Gale, P.C.; and Ryan McClure, Esq.

3. *History of the Federal Judiciary, Biographical Directory of Federal Judges: Stanceu, Timothy C.*, FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=3217&cid=999&ctype=na&inststate=na> (last visited Nov. 4, 2014).

4. *History of the Federal Judiciary, Biographical Directory of Federal Judges: Pogue, Donald Carl*, FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=3210&cid=999&ctype=na&inststate=na> (last visited Nov. 4, 2014).

5. *History of the Federal Judiciary, Biographical Directory of Federal Judges: Carman, Gregory Wright*, FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=3200&cid=999&ctype=na&inststate=na> (last visited Nov. 4, 2014); *History of the Federal Judiciary, Biographical Directory of Federal Judges: Eaton, Richard K.*, FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=3202&cid=999&ctype=na&inststate=na> (last visited Nov. 4, 2014).

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(currently at the Department of Justice Civil Division as Director of the Offices of Foreign Litigation and International Legal Assistance and the International Trade Field Office in the Commercial Litigation Branch<sup>6</sup>) to serve on the court.<sup>7</sup> Judge Sharon Prost assumed duties of Chief Circuit Judge at the Federal Circuit Court of Appeals,<sup>8</sup> replacing Judge Rader.<sup>9</sup>

B. OVERVIEW OF 2014 U.S. COURT OF INTERNATIONAL TRADE CASES

In 2014, the CIT released the following notable cases relating to 28 U.C.S. § 1581 actions:

1. *LDA Incorporated v. U.S.*<sup>10</sup>

CBP denied the importer's protest stating the assessment of antidumping duties on imported merchandise is not protestable under 19 U.S.C. § 1514. The importer contested the denial via 28 U.S.C. § 1581(a). The Government sought to dismiss the action for lack of jurisdiction, claiming: CBP's determination is not protestable under 19 U.S.C. § 1514(a)(2); importer is required to seek a timely scope ruling from the Department of Commerce; and importer's failure to do so deprives the court of jurisdiction. But, the court distinguished this action from those holding an importer cannot protest Customs' liquidation of an entry with dumping duties and bring suit via § 1581(a),<sup>11</sup> stating the *Sandvik* rule only applies to cases where the scope of the order is in question, not where Customs has mistakenly applied the order on its own.<sup>12</sup> As in *Xerox*, CIT found Customs had not acted in a merely ministerial capacity, but made its own decision the goods were within the scope of the order. Thus, under *Xerox*, where it is alleged Customs erred as a matter of fact by including the goods within the scope of the order, Customs' determination is protestable.

2. *Ford Motor Co. v. United States*<sup>13</sup>

The CIT affirmed CBP's denial of Ford's NAFTA post-entry duty refund claims under 19 U.S.C. § 1520(d), because the associated certificates of origin were not submitted within one year of the date of importation. The court of appeals remanded, seeking clarification from CBP as to its different treatment of claims for waivers for traditional post-

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6. *President Obama Announces Intent to Nominate Jeanne E. Davidson to Serve on the United States Court of International Trade*, THE WHITE HOUSE (Aug. 18, 2014), <http://www.whitehouse.gov/the-press-office/2014/08/18/president-obama-announces-intent-nominate-jeanne-e-davidson-serve-united>.

7. *Id.*

8. *Sharon Prost, Chief Circuit Judge*, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, <http://www.cafc.uscourts.gov/judges/sharon-prost-chief-circuit-judge.html> (last visited Nov. 4, 2014).

9. *History of the Federal Judiciary, Biographical Directory of Federal Judges: Rader, Randall Ray*, FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=1952&cid=999&ctype=na&instat=na> (last visited Nov. 4, 2014).

10. *LDA Incorporated v. United States*, 978 F. Supp. 2d 1359, 1361-62 (U.S. Ct. Int'l Trade 2014).

11. *See, e.g., Sandvik v. United States*, 957 F. Supp. 276, 277 (U.S. Ct. Int'l Trade 1997), *aff'd* 164 F.3d 596, 598 (Fed. Cir. 1998); *Fujitsu Ten Corp. of Am. v. United States*, 957 F. Supp. 245, 246-47 (U.S. Ct. Int'l Trade 1997), *aff'd sub nom. Sandvik v. United States*, 164 F.3d 596, 598 (Fed. Cir. 1998).

12. *See Xerox Corp. v. United States*, 289 F.3d 792 (Fed. Cir. 2002).

13. *Ford Motor Co. v. United States*, 978 F. Supp. 2d 1350 (U.S. Ct. Int'l Trade 2014).

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import NAFTA claims and those under the Reconciliation Program. On remand, CIT sustained CBP's explanation for the distinction based on the interpretation of two different statutes, stating 1520(d) "claims are not treated as entries and therefore do not have certain statutory safeguards to remedy mistakes and misconduct in awarding duty free treatment under NAFTA"<sup>14</sup> while claims for waiver under the Reconciliation Program "are treated as entries and therefore have a set of statutory safeguards that permit Customs to remedy mistakes and misconduct in awarding duty free treatment under NAFTA."<sup>15</sup> Therefore, Customs' "waiver authority under § 1520(d) must be viewed within the context of these two separate mechanisms for filing post-importation claims under NAFTA."<sup>16</sup>

3. *Other Notable Cases*

Additional CIT cases include:

- a. In *Netchem, Inc. v. United States*,<sup>17</sup> CIT dismissed for lack of jurisdiction because entries were untimely liquidated, untimely paid, or protested at the wrong port.
- b. In *BP Oil Supply Co. v. United States*,<sup>18</sup> the court denied cross-motions for summary judgment on claims for "substitution unused merchandise drawback" of certain customs duties, taxes and fees paid on importations of crude petroleum.
- c. In *Streetsurfing, LLC v. United States*,<sup>19</sup> "waveboards" were classified as sports equipment instead of wheeled toys.
- d. In *Best Key Textiles Co. Ltd. v. U.S.*,<sup>20</sup> "metalized" yarn's classification was considered.

C. OVERVIEW OF DECISIONS BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT (CAFC)

1. *United States v. Trek Leather, Inc.*,<sup>21</sup>

The CAFC, en banc, affirmed a decision by CIT<sup>22</sup> imposing civil penalties pursuant to 19 U.S.C. § 1592(c)(2) against a closely held corporation's owner for gross negligence when he arranged for the importation of merchandise by means of false statements and/or material omissions.<sup>23</sup> The decision vacates an earlier Federal Circuit panel decision, holding corporate officers of an "importer of record" are not personally liable for penalties under § 1592(a) absent justification for piercing the corporate veil.<sup>24</sup> The full court found 19

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14. *Id.* at 1356.

15. *Id.* at 1357.

16. *Id.* at 1357.

17. *Netchem, Inc. v. United States*, 961 F. Supp. 2d 1336, 1339 (U.S. Ct. Int'l Trade 2014).

18. *BP Oil Supply Co. v. United States*, 2011 Ct. Intl. Trade LEXIS 114, at \*1 (U.S. Ct. Int'l Trade Sept. 16, 2011).

19. *Streetsurfing, LLC v. United States*, 11 F. Supp. 3d 1287 (U.S. Ct. Int'l Trade 2014).

20. *Best Key Textiles Co. Ltd. V. United States*, No. 13-00367, 2014 WL 705286, at \*1 (U.S. Ct. Int'l Trade Feb. 25, 2014).

21. *United States v. Trek Leather, Inc.*, 767 F.3d 1288 (Fed. Cir. 2014) (en banc).

22. *United States v. Trek Leather Inc.*, 781 F. Supp. 2d 1306 (U.S. Ct. Int'l. Trade 2011), rev'd 724 F.3d 1330 (Fed. Cir. 2013).

23. *United States v. Trek Leather, Inc.*, 767 F.3d 1288, 1290 (Fed. Cir. 2014).

24. *See United States v. Trek Leather, Inc.*, 724 F.3d 1330 (Fed. Cir. 2013), *vacated* No. 2011-1527, 2014 WL 843527, at \*1 (March 5, 2014).

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U.S.C. § 1592 permits assessment of penalties against any individual who “introduces” merchandise into the commerce of the United States by means of “a material and false statement,” even if those individuals are not the “importer of record” and when there has not been any showing of fraud.<sup>25</sup> Based on Supreme Court precedent, the CAFC held “introduction” includes filing customs papers that “enter” goods into United States commerce, and the term is flexible and broad enough to ensure the statute is not restricted to the “technical” process of “entering” goods.<sup>26</sup>

This decision recognizes personal liability can extend to a person involved with introducing merchandise into commerce using a material and false misstatement even if: (1) he is not the actual importer, (2) he is not an officer of the importer, and (3) the activity does not involve fraud.

2. *Other Notable Customs-Related CAFC Decisions*

Other Customs-related decisions issued by CAFC include classification of:

- a. “White sauce”<sup>27</sup>
- b. “Sports sandals”<sup>28</sup>
- c. “Glass flower vases”<sup>29</sup>
- d. “Beef jerky products”<sup>30</sup>
- e. “Tempura vegetables and vegetable bird’s nests”<sup>31</sup>
- f. “Football jerseys, pants and girdles” as apparel products<sup>32</sup>
- g. “Shelf bra camisoles” as articles similar to brassieres since the garments had dual purposes of body coverage and bust support<sup>33</sup>
- h. A flexible multilayer sheet, composed of several plastic layers encasing a single aluminum layer, as “plastic” under HTSUS subheading 3921.90.40 where there was no error in CIT’s determination the sheet did not contain the essential character of plastic<sup>34</sup>
- i. A mixture containing beta-carotene, antioxidants, gelatin, sucrose, and corn starch as “provitamins, unmixed” under HTSUS subheading 2936.10.00.<sup>35</sup>

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25. *See* United States v. Trek Leather, Inc. 767 F.3d at 1294 (citing United States v. Hitachi America, Ltd., 172 F.3d 1319 (Fed. Cir. 1999)).

26. *Id.*, (citing United States v. 25 Packages of Panama Hats, 231 U.S. 358, 359-60 (1913)).

27. *Int’l Custom Prods. v. United States*, 748 F.3d 1182, 1182 (Fed. Cir. 2014).

28. *Deckers Corp. v. United States*, 752 F.3d 949, 951 (Fed. Cir. 2014).

29. *Dependable Packaging Solutions, Inc. v. United States*, 757 F.3d 1374, 1375 (Fed. Cir. 2014).

30. *Link Snacks, Inc. v. United States*, 742 F.3d 962, 964 (Fed. Cir. 2014).

31. *R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1351 (Fed. Cir. 2014).

32. *Riddell, Inc. v. United States*, 754 F.3d 1375, 1377 (Fed. Cir. 2014).

33. *Victoria’s Secret Direct, LLC v. United States*, 2014 U.S. App. LEXIS 19832, at \*1 (Fed. Cir. 2014).

34. *Alcan Food Packaging (Shelbyville) v. United States*, 2014 U.S. App. LEXIS 21796, at \*1 (Fed. Cir. Nov. 18, 2014).

35. *Roche Vitamins v. United States*, 2014 U.S. App. LEXIS 21963, at \*14 (Fed. Cir. Nov. 20, 2014).

D. CUSTOMS AND BORDER PROTECTION

1. *CBP's Pilot Trusted Trader Program*

On June 16, 2014, CBP published a Federal Register Notice<sup>36</sup> titled "Announcement of Trusted Trader Program Test," commencing with an 18-month pilot program. The Trusted Trader Program unifies Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) voluntary programs into a new "Trusted Trader" program. The results of the pilot will determine whether the Trusted Trader Program will go forward. CBP is collaborating with the U.S. Consumer Product Safety Commission (CPSC) and the U.S. Food and Drug Administration (FDA) to create the Trusted Trader Program. The three agencies will collaborate, share information, streamline the application and validation process; and increase the efficiencies in existing trade programs.

2. *CBP Centers of Excellence and Expertise*

On March 10, 2014, CBP published a Federal Register Notice modifying prior notices regarding its Centers of Excellence and Expertise (Centers) Test.<sup>37</sup> Specifically, the notice announces changes to the scope of coverage for some of the Centers and expansion of types of entries processed by the Centers, waiving additional regulation for test participants, and clarifying the submission process for responses to Requests for Information and Notices of Action.

**III. Trade Promotion and Other Legislative Branch Developments and Administrative and Executive Policy Developments<sup>38</sup>**

A. U.S. CUSTOMS AND BORDER PROTECTION ANNOUNCED CHANGES TO THE FOCUSED ASSESSMENT PROGRAM

CBP published updates to its Focused Assessment (FA) program for all new Pre-Assessment Survey (PAS) engagements effective October 1, 2014. Typically, high-volume importers are targeted as potential candidates for FA. The PAS is the beginning stage of a FA.

A FA is a comprehensive audit conducted by CBP's Regulatory Audit (RA) Division. The FA's purpose is to determine whether adequate internal controls are in place to ensure an acceptable level of compliance with CBP laws and regulations. If CBP finds the company has an unacceptable number of compliance errors or deficiencies, the company may be required to formulate a Compliance Improvement Plan (CIP) and/or tender any loss of revenue owed to the U.S. Government.

The FA program is divided into three distinct phases: (1) PAS; (2) Assessment Compliance Testing (ACT); and (3) Post Assessment Follow-Up. The PAS assesses an entity's

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36. Announcement of Trusted Trader Program Test, 79 Fed. Reg. 34,334, 34334 - 34340 (June 26, 2014).

37. Centers of Excellence and Expertise Test; Modifications, 79 Fed. Reg. 13,322 (Mar. 10, 2014).

38. Section editors: Jamie Joiner, Joiner Law Firm, Houston, Texas; David Salkeld, Arant Fox LLP, Washington, D.C.; and Vicky Wu, Joiner Law Firm, Houston, Texas. Authors: Jamie Joiner, Joiner Law Firm; Bethany Nelson, University of Wisconsin-Madison; David Salkeld, Arant Fox LLP; Louis Valdez Jimenez, 2015 JD/MBA Candidate University of Wisconsin-Madison; Vicky Wu, Joiner Law Firm.

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system of internal controls over import activities to determine if the auditee poses an “acceptable risk” for complying with CBP laws and regulations. If there are significant internal control deficiencies or material non-compliance issues, the FA team will either: (i) permit the auditee to develop a CIP and perform its own review to calculate the loss of revenue owed to CBP; or (ii) proceed to an ACT. The changes implemented in 2014 only address the PAS phase of the FA program. Updates to other phases are expected to be implemented in the next few years.

Notable changes to the PAS<sup>39</sup> phase of the FA process implemented in 2014 include:

- **Earlier Notification of the Pre-Assessment Survey Phase & Elimination of the Formal Advance Conference:** The FA team may request certain readily available information (e.g., written policies and procedures and/or accounting records) to better tailor the risk assessment plan and questionnaire to the importer. Auditors will no longer conduct an onsite formal advance conference but informally explain the FA process to the importer and provide reference materials.
- **Preliminary Assessment of Risk (PAR):** Auditors will no longer assess a level of risk at the PAR phase. Because the PAR is limited to an analysis of CBP and other readily available data, CBP states “it is premature to assess the level of inherent risk at this point.” Since auditors continue to reassess risk as they obtain additional information, the assessment of risk will occur at a later stage in the PAS process, after more information is obtained.
- **Increased Emphasis on the Consideration of Significance and Materiality in Making Audit Decisions:** (e.g., value, classification, free trade agreements, anti-dumping and countervailing duties, etc.). The auditor may decide to include or exclude audit areas from review based on information gathered during the PAS.
- **Changes to the Questionnaire:** CBP renamed the Internal Control Questionnaire the Pre-Assessment Survey Questionnaire (PASQ) and included additional standard questions regarding business practices and import activities. Auditors will tailor the PASQ to ensure questions are relevant to the importer’s activity and identified risks and environment (e.g., knowledge and skill of importer’s personnel) useful in finalizing the risk assessment.
- **Selecting Additional Entry Line Items for Walkthrough Tests:** CBP will select more walkthrough entries to help auditors identify and understand the different types of transactions and procedures.
- **Larger Sample Sizes:** CBP will determine which areas to examine more closely by selecting sample transactions to verify procedures and identify deficiencies. CBP replaced the number of samples with more general guidelines. For 250 items or more, auditors may select 20-40 samples, for fewer than 250 items, auditors may test ten percent.<sup>40</sup>
- **Incorporate Changes in Report Language:** CBP incorporated changes to its PAS report language, such as: (i) limiting findings to period of the audit, (ii) including language expressing inherent limitations of internal control and cautioning projection

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39. For additional information see *Focused Assessment Program (FA)*, CPB.GOV, <http://www.cbp.gov/trade/audits/focused-assessment> (last visited Jan. 23, 2015).

40. U.S. Customs and Border Protection Office of International Trade, Regulatory Audit (2014), 4, available at <http://www.cbp.gov/sites/default/files/documents/Exhibit%20C%20%20FA%20PAS%20Audit%20Program%20%2810012014%29.pdf>.

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of results to future periods; and (iii) when applicable, explaining the limited nature of audit procedures performed for IP rights, FTZs, and NAFTA.

**B. FTAs AND POST-ENTRY CORRECTION-CBP GUIDANCE ON POST-IMPORTATION CLAIMS FOR PREFERENTIAL TARIFF TREATMENT**

On August 11, 2014, CBP issued guidance regarding post-entry preference claims on free trade agreements. Importers can no longer utilize the protest mechanism in 19 USC § 1514 to file an initial claim of preference. According to CBP, a right of protest is not available when there is a failure to timely claim preference.

However, there are several free trade agreements with mechanisms for post-importation claims of preference. CBP will allow such claims after importation.

For programs lacking a section 1520(d) provision, CBP has changed its guidelines. It will allow amendments to unliquidated entries with either a Post-Entry Amendment or a Post Summary Correction. However, amendments on liquidated entries “will not be treated as protests.”<sup>41</sup> Therefore, protests will no longer be accepted in lieu of timely filing preference or pre-liquidation amendments claims.

**C. CENTERS OF EXCELLENCE AND EXPERTISE PILOT CHANGES**

CBP established the Centers of Excellence and Expertise (CEE) to “bring all of CBP’s trade expertise to bear on a single industry in a strategic location.”<sup>42</sup> The CEEs are designed to be resources to the trade community and government authorities and have specialized staff to answer questions, provide information, and implement strategies to ensure uniformity and resolve compliance issues.<sup>43</sup> In addition, each CEE conducts industry-specific validation activities, protests, and post-entry amendment/post-summary correction reviews.<sup>44</sup> Since CBP announced the creation of CEEs in 2012, CBP has established 10 CEEs throughout the country.<sup>45</sup>

At the CBP East Coast Trade Symposium in March of 2014, CBP announced major changes to the CEEs: the Electronics CEE in New York, the Pharmaceuticals CEE in Los Angeles, and the Petroleum, Natural Gas and Minerals CEE in Houston will handle all entries for their designated industries.<sup>46</sup> CEE Port Directors were also empowered with the authority to: (1) process additional entry types; (2) waive certain regulatory requirements including those contained in section 10.847(c) of the CBP regulations allowing

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41. U.S. Customs and Border Protection, CSMS Message: Post-importation Claims for Preferential Tariff Treatment (Aug. 14, 2014 3:16 PM), [http://apps.cbp.gov/csms/docs/20244\\_674951276/Post\\_entry\\_preference\\_claims\(b\).txt](http://apps.cbp.gov/csms/docs/20244_674951276/Post_entry_preference_claims(b).txt).

42. U.S. CUSTOMS AND BORDER PROTECTION, CENTERS OF EXCELLENCE AND EXPERTISE TRADE PROCESS DOCUMENT, 3 (2014), *available at* <http://www.cbp.gov/sites/default/files/documents/Updated%20CEE%20Trade%20Process%20Document%20032814.pdf>

43. *Id.*

44. *Id.*

45. U.S. CUSTOMS AND BORDER PROTECTION, ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS CENTERS OF EXCELLENCE AND EXPERTISE, 1, (2014), *available at* <http://www.cbp.gov/sites/default/files/documents/TM%20E%20CEEs%20Oct%202014%20COAC%20EXTERNAL.pdf>.

46. Kathleen M. Murphy and Mollie D. Sitkowski, *CBP Announces Changes to CEEs*, DRINKERBIDDLE, (Mar. 18, 2014), <http://www.drinkerbiddle.com/resources/publications/2014/CBP-Announces-Changes-to-CEEs-?Section=Publications>.

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participants to submit their corrected duty free treatment claims to the CEE where the claim was originally filed instead of the CBP port; and (3) require Notices of Action and Requests for Information be sent electronically to an importer's designated CEE.<sup>47</sup>

**D. AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA) AND GENERALIZED SYSTEM OF PREFERENCES AND TRADE BENEFITS UNDER AGOA**

Regulatory amendments that became effective on June 26, 2014 reflect and clarify the statutory standard for preferential tariff treatment under the AGOA. This final rule also included specific documentary, procedural and other related requirements that must be met in order to qualify for preferential treatment. The changes included clarification regarding inclusion of certain costs in order to satisfy the value content requirement.<sup>48</sup>

**IV. Other Governmental Agencies<sup>49</sup>**

**A. ACE UP CBP'S SLEEVE: MIGRATION & PGA INTEGRATION**

2014 represented a significant milestone in the slow but sure migration of CBP from its current and antiquated Automated Commercial System (ACS) to its new and improved system, coined the Automated Commercial Environment (ACE).<sup>50</sup> "ACE is the backbone of CBP trade processing and risk management,"<sup>51</sup> and is intended to serve as a "single window" for CBP, the trade community, and the multitude of Partner Government Agencies (PGAs) whose laws and regulations impact the import process.

The single window concept was derived from the SAFE Port Act of 2006, which directed all federal agencies to participate in the International Trade Data System (ITDS) with the goal of establishing a single funnel for the communication of trade data and communication with the trade community.<sup>52</sup> However, despite that mandate and regardless of many years of ACE development, challenges in programming and in securing government funding, as well as delays in on-boarding PGAs, have caused CBP to repeatedly extend its deployment schedule.

The much-needed boost for ACE implementation finally came on February 19, 2014, with the issuance of Executive Order 13659-*Streamlining the Export/Import Process for America's Businesses*.<sup>53</sup> The Executive Order established a deadline of December 31, 2016 by which time PGAs must have the necessary agreements and requirements in place to use ITDS and ACE as the primary means by which CBP and PGAs are to interface with the

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47. Centers of Excellence and Expertise Test; Modifications, 79 Fed. Reg. 13,322 (Mar. 10, 2014).

48. See Agency Information Collection (Contract for Training and Employment) Activities Under OMB Review, 79 Fed. Reg. 30,357 (May 27, 2014).

49. Section editor: Nghia "Neo" T. Tran, Kutak Rock, Washington, D.C. Authors: Shannon Fura, Fura Page, P.C.; Yankun Guo, 2015 JD Candidate, John Marshall Law School; Rebecca Rodriguez, Gray Robinson P.A.

50. U.S. Customs and Border Protection, *Automated Commercial Environment (ACE)/International Trade Data System (ITDS) "ACEopedia,"* (2014).

51. *Id.*

52. SECURITY AND ACCOUNTABILITY FOR EVERY PORT ACT OF 2006, Pub. L. No. 109-347, § 405, 120 Stat. 1929-31 (2006).

53. PROCLAMATION NO. 37, 79 Fed. Reg. 10,657 (Feb. 25, 2014).



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trade for the submission, review, and release of trade-related data and cargo.<sup>54</sup> In response to that E.O., CBP has launched an aggressive deployment schedule and, by extension, accelerated PGA integration, including timeframes under which PGAs must provide specific message sets, i.e., data requirements to be collected by CBP from the trade on behalf of PGAs for cargo release and entry summary response.<sup>55</sup> The schedule mandates migration to ACE for all electronic manifest filings by May 1, 2015; mandatory use of ACE for all electronic cargo release and related entry summary filings by November 1, 2015; and mandatory use of ACE for all remaining electronic portions of the CBP cargo process by October 1, 2016.<sup>56</sup>

The drive to the 2015/2016 implementation dates has caused concern in the trade community due to the sheer number of PGAs that must be engaged in the process.<sup>57</sup> Not surprisingly, some PGAs are much further along in the implementation process than others. At the forefront of integration are the Environmental Protection Agency (EPA) and the Food Safety and Inspection Service (FSIS), with both agencies in pilot stages with CBP on discrete aspects of their areas of oversight.<sup>58</sup> For example, as of April 30, 2014, the EPA has pilots in production that include ozone-depleting substances and vehicle and engine declaration with notice of arrival for pesticide imports and hazardous waste exports (spent lead acid batteries) scheduled for late 2014.<sup>59</sup>

Understanding the need to engage the trade community, PGAs are establishing working groups to finalize the message sets and to volunteer to participate in pilot testing.<sup>60</sup> The establishment of these message sets may constitute changes in current procedures. In some cases, PGAs may potentially require data at the time of entry *or earlier*, rather than post-entry, as may currently be the case.<sup>61</sup> Given these likely changes, it is incumbent upon the trade to monitor PGA implementation guides to understand how these changing requirements may impact their import operations. As time continues to grow shorter, importers and brokers alike have voiced concern over the timing to onboard PGAs and whether implementation will be effective.

At the most recent Trade Support Network Plenary Session held in Washington, DC this past October, CBP Commissioner Kerlikowske reiterated that ACE is an Administration priority and that CBP recognizes the concerns raised by the trade with respect to PGA rollout and the impact on the ACE deadlines schedule for 2015/2016.<sup>62</sup> The Commissioner did not back down from the planned implementation schedule, however, stating that CBP is working with PGAs to keep on track.<sup>63</sup> How 2015 will unfold remains to be seen.

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54. *Id.*

55. See U.S. Customs and Border Protection, *ACE and Automated Systems* (2014).

56. See *id.*

57. Report to Congress on the International Trade Data System, ii (2013).

58. See *id.*

59. Roy Chaudet, *EPA ACE Pilots: Looking for Volunteers* 3 (2014).

60. U.S. Customs and Border Protection, *Commissioner Kerlikowske opens COAC Meeting in Washington, D.C.* (2014).

61. *Id.*

62. *Id.*

63. *Id.*

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**B. DEVELOPMENTS ON THE SECURITIES AND EXCHANGE COMMISSION'S CONFLICT-MINERALS DISCLOSURE RULE**

Pursuant to Section 1502 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Section 1502), the SEC, in 2012, adopted a rule (Conflict Minerals Rule) requiring companies to comply with disclosure requirements for “conflict materials” that originate from the Democratic Republic of the Congo (DRC).<sup>64</sup> The congressional intent behind the rule is to ensure that companies using minerals from the DRC do not help finance conflict characterized by extreme levels of violence in the eastern [DRC], particularly sexual-and gender-based violence, and contributing to an emergency humanitarian situation.<sup>65</sup>

On April 14, 2014, a panel of the Court of Appeals for the D.C. Circuit affirmed in part the decision of the District Court rejecting three trade associations’ statutory challenges to the Conflict Minerals Rule under the Administrative Procedure Act and the Securities Exchange Act.<sup>66</sup> However, Judge Randolph, writing the court’s opinion, concluded that the Conflict Minerals Rule and Section 1502 “violate the First Amendment to the extent [they] require regulated entities to report to the [SEC] and to state on their website that any of their products have ‘not been found to be “DRC conflict free.””<sup>67</sup>

Nevertheless, on November 18, 2014, the Court of Appeals for the D.C. Circuit granted a limited rehearing of the case<sup>68</sup> in light of the holding that mandatory disclosure of an animal’s country-of-origin does not violate First Amendment free speech, in *American Meat Institute v. U.S. Department of Agriculture*.<sup>69</sup> The rehearing on the Conflict Minerals Rule will likely be held in early 2015, but only on the First Amendment issue, meaning companies must still comply with the rest of the SEC’s Conflict Minerals Rule.<sup>70</sup>

**V. Canadian Legal Developments<sup>71</sup>**

**A. WITHDRAWAL OF GENERAL PREFERENTIAL TARIFF (GPT) TREATMENT**

In 2014, Canada offered duty-free or preferential duties rates to goods originating from 176 countries under GPT.<sup>72</sup> A review revealed the income level and trade competitiveness of some GPT beneficiary countries has improved, so Canada decided to modernize GPT.

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64. CONFLICT MINERALS RULE, 77 Fed. Reg. 56274 (Sept. 12, 2012) (codified at 17 C.F.R. pts. 240, 249b).

65. DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, H.R. 4173, 11th Cong. § 1502 (2010). See also 56 Cong. Rec. S3976 (daily ed. May 19, 2010) (statement of Sen. Russ Feingold).

66. Nat’l Ass’n of Mfrs. v. S.E.C., 748 F.3d 359, 365-70 (D.C. Cir. 2014).

67. *Id.* at 371.

68. Nat’l Ass’n of Mfrs. v. S.E.C., No. 13-5252, slip op. at 14 n.1 (D.C. Cir. Nov. 18, 2014).

69. *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 27 (D.C. Cir. 2014).

70. Andrew Zajac, *Conflict Mineral Rule Gets New Life in Disclosure Rehearing*, BLOOMBERG, Nov. 18, 2014. *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 27 (D.C. Cir. 2014).

71. Section Editor: Daniel Kiselbach, Deloitte Tax Law LLP, Vancouver, Canada. Authors: Greg Kanargelidis, Blake, Cassels & Graydon LLP; Daniel Kiselbach, Deloitte Tax Law LLP, and Cyndee Todgham Cherniak, Lexsage.

72. Canada Border Services Agency, *Customs Tariff Departmental Consolidation* (2014).

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Effective January 1, 2015, entitlement to GPT will be withdrawn from goods originating from 72 higher-income and trade-competitive countries, including goods originating from countries such as Brazil, Chile, and China.<sup>73</sup> The Most-Favoured-Nation Tariff (MFNT) will apply instead of the GPT.<sup>74</sup>

**B. FREE TRADE AGREEMENTS**

Two key free trade agreement activities affecting customs are noted below. First, the legal text for the *Canada-European Union: Comprehensive Economic and Trade Agreement* (CETA) was issued.<sup>75</sup> CETA will eliminate substantially all customs tariffs for Canadian goods imported into the EU and for EU goods imported into Canada.<sup>76</sup> CETA must undergo a legal ratification process before it is brought into force. Second, Canada signed a free trade agreement with Korea<sup>77</sup> that will substantially eliminate customs duties for qualifying goods. Canada and South Korea have committed to ratify the agreement to be effective as soon as possible.<sup>78</sup>

**C. CANADIAN CUSTOMS VALUATION JURISPRUDENCE**

Since the last *Year in Review*, the Canadian International Trade Tribunal (CITT) issued the following decisions dealing with customs valuation of imported goods

1. *Skechers USA Canada, Inc v. CBSA*<sup>79</sup>

Skechers addressed whether a payment between related parties for research, development, and design expenses was required to form part of the “transaction value” of the imported goods on which customs duties are payable.<sup>80</sup> The central issue concerned a payment made by Skechers Canada on account of research, development and design (R&D).<sup>81</sup> Some of these R&D expenses were attributable to footwear designs that were ultimately produced and imported into Canada, but some of the R&D expenses were attributable to eliminated designs never manufactured into goods.<sup>82</sup> Skechers Canada argued that the “R&D” payment was for intangibles and not a payment “in respect of” the goods.<sup>83</sup> The Tribunal determined the totality of such expenses are necessary for production of the goods, and the R&D payments remain inseparable from the footwear products themselves, and must be added to the “transaction value” of the goods.<sup>84</sup>

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73. *General Preferential Tariff Withdrawal Order*, CANADA GAZETTE, Sept. 27, 2013.

74. *Id.*

75. Government of Canada, *Canada-European Union: Comprehensive Economic and Trade Agreement* (CETA) (2014).

76. *Id.*

77. *Foreign Affairs, Trade and Development Canada, Canada-Korea Free Trade Agreement (CKFTA)* (2014).

78. *Id.*

79. *Skechers USA Canada, Inc. v. CBSA*, (2013), Appeal No. AP-2012-073 (Can. Ont.).

80. *Id.* at 1.

81. *Id.* at 2.

82. *Id.* at 4.

83. *Id.*

84. *Id.* at 72.

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2. *Double J Fashion Group Inc. v. The President of the Canada Border Services Agency*<sup>85</sup>

*Double J Fashion* addressed whether a “distribution fee” payable by the importer to the vendor, separate from the price of the goods, must be included in the “transaction value” on which customs duties are payable.<sup>86</sup> The Tribunal decided the “distribution fee” was a payment “in respect of” the imported goods, and formed part of the value of the goods for duty purposes. The Tribunal’s decision was based on a number of factors.<sup>87</sup> The price of the goods was at the vendor’s cost, so the goods were not sold at a profit.<sup>88</sup> The so-called distribution fee was purportedly for advertising and marketing services, but payments were mandatory, calculated as a percentage of the discounted price of the goods, and there was no means of measuring whether and to what extent any services were being provided.<sup>89</sup>

3. *Hudson’s Bay Company v. President of the Canada Border Services Agency*<sup>90</sup>

*Hudson’s Bay* concerned whether certain discounts granted to Hudson’s Bay Company (HBC) should reduce the duty value of the imported goods, or be disregarded as having been “effected” subsequent to importation.<sup>91</sup> HBC purchased goods from Macy’s Merchandising Group (Macy’s).<sup>92</sup> HBC filed refund claims for “margin support” and “advertising support” discounts granted by Macy’s to HBC.<sup>93</sup> For a rebate to be deducted from price paid or payable, the Tribunal held the trigger or reason for the rebate must “exist before importation, and not be dependent on a condition that can only be met after such importation has occurred. . . .”<sup>94</sup> The Tribunal concluded HBC was entitled to a reduction in the transaction value of the goods equal to the value of the discounts, with a corresponding refund of customs duties.<sup>95</sup>

4. *Bluestein Enterprises Inc v. The President of the Canada Border Services Agency*<sup>96</sup>

*Bluestein Enterprises* concerned customs valuation of printed t-shirts and concert memorabilia imported by Bluestein from the U.S.<sup>97</sup> Bluestein did not purchase the goods it imported.<sup>98</sup> It acted as the importer and sold the goods to Canadian consumers at

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85. *Double J Fashion Group Inc. v. The President of the Canada Border Services Agency*, (2014), Appeal No. AP-2013-017 (Can. Ont.).

86. *Id.* at 2.

87. *Id.* at 86.

88. *Id.* at 82.

89. *Id.* at 85.

90. *Hudson’s Bay Company v. President of the Canada Border Services Agency*, (2014), Appeal No. AP-2012-067 (Can. Ont.).

91. *Id.* at 2.

92. *Id.* at 10.

93. *Id.* at 11.

94. *Id.* at 36.

95. *Id.* at 79.

96. *Bluestein Enterprises Inc. v. The President of the Canada Border Services Agency*, (2014), Appeal No. AP-2013-028 (Can. Ont.).

97. *Id.* at 3.

98. *Id.* at 5.

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concerts: at all times the goods remained the property of the U.S. merchandisers.<sup>99</sup> The Tribunal concluded that the deductive value method was applicable, based on the selling price of the imported goods to Canadian customers.<sup>100</sup> From such resale prices, the CBSA agreed to deduct Bluestein's fees to the U.S. merchandisers, including expenses to bring the goods to Canada and to sell the goods, plus included profit earned by Bluestein.<sup>101</sup> The Tribunal interpreted the statutory deduction for "profit and general expenses" to mean profit realized by the Canadian-based earner, Bluestein, which expenses were incurred in Canada.<sup>102</sup> The CBSA therefore did not make any deductions for profits earned by U.S. merchandisers.<sup>103</sup> Furthermore, CBSA did not make any deductions for royalties paid by U.S. merchandisers to U.S. license holders of designs printed on the goods, because the deductive value method does not specifically provide for deduction of royalties.<sup>104</sup>

5. *Comments On Valuation Jurisprudence*

The four customs valuation decisions released by the CITT since our last Year in Review address issues of potentially broad application to many import scenarios. In the two cases involving whether certain payments are "in respect of" imported goods and therefore form part of the "price paid or payable" for the goods, the *Skechers* case demonstrates that "R&D" type payments are at risk of being dutiable unless the transactions are properly structured to avoid this result. Similarly, planning may have assisted the importer in *Double J*. The CITT appears to have come to the correct result in the *HBC* case, though planning would have made satisfying the burden of proof much easier. Finally, *Bluestein* considered the extent of deductions permitted from the resale price in Canada to arrive at the "deductive value" method. Some of CITT's conclusions are subject to debate. Overall, the cases demonstrate the customs valuation of imported goods should be the subject of advance planning in order to avoid the assessment of additional duties and taxes.

D. CANADIAN JUDICIAL REVIEW JURISPRUDENCE

Certain decisions of CBSA cannot be appealed to the Canadian International Trade Tribunal and must be judicially reviewed to the Federal Court of Canada (Federal Court).<sup>105</sup>

On February 24, 2014, the Federal Court decided *Dorel Industries Inc. v. The President of the Canada Border Services Agency*,<sup>106</sup> regarding CBSA's advance ruling about duty drawbacks. The Federal Court determined that absent false representations or concealed information, the Minister of Public Safety and Emergency Preparedness could not retroactively change its mind and held:

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99. *Id.*

100. *Id.* at 61.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. FEDERAL COURTS ACT, R.S.C. 2011, c. F-7.

106. *Dorel Industries Inc. v. Canada (Border Services Agency)*, (2014), F.C. 175 (Can. C.A.).

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“The Minister . . . is undoubtedly entitled to change a ruling and is not bound by previous decisions. However, in the absence of a clear indication that Parliament intended to give the Minister the power to withdraw retroactively a certificate granting relief of duties that has been validly issued, I am unable to agree with the Respondent that it may now reassess the Applicant. . . .”<sup>107</sup>

The Federal Court allowed judicial review because the Minister’s actions were unreasonable and legally incorrect.<sup>108</sup>

In *Thériault v. Minister of Public Safety and Emergency Preparedness*,<sup>109</sup> the Federal Court upheld seizure of \$16,210.50 under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*<sup>110</sup> (PoC Act). The Applicant and a friend were at a Canadian airport to board a plane to the Dominican Republic.<sup>111</sup> The Applicant was stopped by CBSA, who asked to search his baggage.<sup>112</sup> CBSA found and counted cash.<sup>113</sup> The Applicant said he was carrying his cash, his son’s cash, and cash belonging to his friend.<sup>114</sup> None of the individuals reported they had over \$10,000.<sup>115</sup> The Federal Court upheld the CBSA’s seizure and held the provisions of the PoC Act are strictly applied.<sup>116</sup>

E. NEXUS CONFISCATIONS

NEXUS is a cooperative program developed by CBSA and CBP to allow low risk pre-approved individual travelers expedited processing at the Canada-US border.<sup>117</sup> NEXUS is a discretionary regulatory program.<sup>118</sup>

In 2014, CBSA Recourse Directorate considered numerous requests for decisions regarding seizures at the border by CBSA. The Recourse Directorate decisions are not published or made available to the public.

In 2014, CBSA Recourse Directorate considered the circumstances of a traveler who incorrectly read the E311 Declaration Card (completed by all air travelers entering Canada) and checked “no” instead of “yes” when answering whether he/she had exceeded personal exemption limits. CBSA acknowledged the traveler made an unintended mistake. In rendering its decision to uphold seizure, CBSA Recourse Directorate indicated the CBSA was not required to consider intention. This decision is being judicially reviewed.

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107. *Id.*

108. *Id.* at 23.

109. *Thériault v. Minister of Public Safety and Emergency Preparedness*, (2014), F.C. 270 (*Can. C.A.*).

110. PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT, R.S.C. 2014, c.17 (*Can.*).

111. *Thériault*, (2014), F.C. 270 at 23.

112. *Id.* at 5.

113. *Id.*

114. *Id.* at 1.

115. *Id.* at 5.

116. *Id.* at 22.

117. U.S. Customs and Border Protection, *NEXUS Program Description* 1.

118. *Id.*

In *Sadana v. Minister of Public Safety*,<sup>119</sup> the Federal Court upheld a NEXUS membership revocation while expressing sympathy since the infraction was a relatively minor violation.

## VI. European Legal Developments<sup>120</sup>

### A. COMMISSIONER OF CUSTOMS

On November 1, 2014, Pierre Moscovici replaced Algirdas Šemeta as Commissioner for Economic and Financial Affairs, Taxation and Customs Union.<sup>121</sup>

### B. THE UNION CUSTOMS CODE

On October 30, 2013, the Union Customs Code (UCC)<sup>122</sup> entered into force and repealed the Community Customs Code (CCC).<sup>123</sup> UCC's substantive provisions will take effect May 1, 2016, once the UCC-related Delegated and Implementing Acts are adopted by the Member States (no later than May 2015).<sup>124</sup> Until then, CCC continues to apply.

UCC lays down "general rules and procedures applicable to goods" imported into or exported out of the "customs territory" of the EU.<sup>125</sup> UCC streamlines existing EU customs legislation and procedures in the context of modern-day needs, offers greater clarity and uniformity to trade, and reinforces expedited customs processing for compliant Authorized Economic Operators.

Arguably, UCC's most significant change is the possibility of withdrawal of the "first sale" valuation principle which allows EU importers to use the earlier sale in the supply chain as the basis for customs value.<sup>126</sup> The withdrawal of the "first sale" rule has not been finalized as UCC's Delegated and Implementing Acts are still in draft form and under discussion by the Member States.<sup>127</sup>

UCC's other significant changes include a mandatory guarantee requirement for all traders wishing to utilize simplified customs procedures; a reduction in the period of a Binding Tariff Information rulings' validity from 6 to 3 years;<sup>128</sup> and permission for AEO-C certified operators to file import/export entries in their own records rather than by submitting full declarations to customs.<sup>129</sup>

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119. *Sadana v. Minister of Public Safety*, (2013), F.C. 1005 (Can. C.A.).

120. Section Editor/Author: Ruta Riley, Redondo Beach, California.

121. Xinhua/Ye Pingfan, *Juncker announces new line-up of European Commission*, CCTV, (Sept. 9, 2014).

122. 2013 O.J. (L 952) 269.

123. 2008 O.J. (L 450) 145.

124. 2013 O.J. (L 952) 269.

125. Regulation (EU) No 952/2013, *supra* note 73, at L 269/11, Article 1.1.

126. Provided the sale was intended for export to the EU. See Baker & McKenzie, *EU - Customs Valuation: EU proposal to withdraw First Sale for Export* INTERNATIONAL TRADE COMPLIANCE UPDATE (Feb 6, 2014, 3:38 PM) <http://www.internationaltradeupdate.com/?entry=1619>.

127. *Id.*

128. Regulation (EU) No 952/2013, *supra* note 73, at L 269/22, Art 33(3).

129. *Id.* at L 269/6, Preamble 43.

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Some UCC changes depend on the development of EU-wide electronic systems.<sup>130</sup> EU customs business is expected to be completely electronic by December 31, 2020.<sup>131</sup>

C. PROPOSED HARMONIZATION OF CUSTOMS PENALTIES

Currently, enforcement of customs laws differs across EU Member States. On December 13, 2013, the EC issued a proposal for a directive<sup>132</sup> that would harmonize customs enforcement across the Member States. The directive establishes a framework concerning infringements of EU customs legislation and provides sanctions for those infringements to be applied uniformly by all Member States.<sup>133</sup>

D. CUSTOMS 2020

On December 20, 2013, the EU established Customs 2020,<sup>134</sup> a cooperation program for customs in the EU for 2014-2020. Customs 2020 establishes a network through which national customs administrators may train, network, and exchange information and expertise.<sup>135</sup> The goal of the program, *inter alia*, is to develop a trans-European electronic system for EU customs administrations.<sup>136</sup>

E. GENERALIZED SCHEME OF PREFERENCES (GSP)

On January 1, 2014, EU's new GSP took effect.<sup>137</sup> Three levels of benefits are available under the EU's GSP:

- “The standard/general GSP arrangement” provides for “tariff reduction to developing countries.”<sup>138</sup>
- The GSP+ provides for “full removal of tariffs on essentially the same product categories as those covered by the general arrangement.”
- “Everything But Arms (EBA) arrangement for least developed countries (LDCs) grants duty-free, quota-free access to all products, except for arms and ammunitions.<sup>139</sup>

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130. *Id.* at L269/86, Art. 278.

131. The Union Customs Code: A Recast of the Modernized Customs Codes [http://ec.europa.eu/taxation\\_customs/customs/customs\\_code/union\\_customs\\_code/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_code/union_customs_code/index_en.htm) (last visited 1/12/2015).

132. *See generally* Proposal for a Directive of the European Parliament and Council on the Union Legal Framework for Customs Infringements COM (2013) 884 final (Dec. 13, 2013).

133. The proposal calls for enactment of provisions by Member States by May 1, 2017. *Id.* at art. 19.

134. *See generally* Council Regulation 1294/2013, 2013 O.J. (L 347) 209 (EU).

135. *Taxation and Customs Union* [http://ec.europa.eu/taxation\\_customs/customs/cooperation\\_programmes/key\\_policies/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/cooperation_programmes/key_policies/index_en.htm) (last visited 1/14/15).

136. *See* Council Regulation (EU) 1294/2013, *supra* n. 80 at L 347/211, preamble 19.

137. Regulation No. 978/2012 Art. 8(2), (L 303) 1, 6 (EU). The application of this Regulation was delayed until 2014 to permit economic operators to adapt to the new scheme.

138. *I.e.* “partial or complete removal of tariffs on two-thirds of all product categories.” *Generalized Scheme of Preferences*, <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/> (last visited 1/14/15).

139. *Id.*



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The new GSP scheme significantly cut the number of beneficiaries from 176 to 90; 41 low and lower-middle income countries will benefit under the standard GSP and/or GSP+ arrangement, and 49 LDCs will benefit under the EBA scheme.<sup>140</sup>

F. CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS (IPRs)

Regulation (EU) 608/2013, concerning customs enforcement of IPRs, went into effect on January 1, 2014.<sup>141</sup> The regulation expanded the scope of IPRs within customs enforcement, “such as topography of semi-conductor products, utility models, and trade names.”<sup>142</sup> Additionally, the regulation amended the definition of “counterfeit goods” “to include packaging, labels, stickers, brochures, and other similar items”<sup>143</sup> infringing upon a registered trade mark or a geographical indication.<sup>144</sup>

G. FREE TRADE AGREEMENTS (FTAs) AND NEGOTIATIONS<sup>145</sup>

1. *Transatlantic Trade and Investment Partnership (TTIP)*<sup>146</sup>

As of October 3, 2014, there have been seven negotiation rounds between the United States and the European Union, and negotiations are now moving into the textual phase, based on specific textual proposals.

2. *EU-Canada Trade Agreement (CETA)*<sup>147</sup>

Negotiations for European Union-Canada trade agreement (CETA) ended September 26, 2014. The Agreement must undergo legal edits and translation into all official EU languages.

3. *Singapore*<sup>148</sup>

The European Union and Singapore completed FTA negotiations on October 17, 2014. The draft agreement must be EC approved and EP ratified.

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140. See Revised EU Trade Scheme to Help Developing Countries Applies on January 1, 2014, Brussels European Commission (Dec. 19, 2013).

Of the 176 former beneficiaries, 54 countries will no longer receive GSP benefits, but will still receive privileged access to EU market under different arrangements. 32 countries will stop benefiting from GSP arrangement as they are now classified by WTO as high and upper-middle income countries or are overseas territories non-dependent on the EU. Countries that lost GSP benefits include China, Ecuador, Thailand, and the Maldives. See Regulation No 1421/2013, 2013 O.J. (L 355) 2 (EU).

141. Regulation No. 608/2013 Art. 40(2), 2013 O.J. (L 181) 33 (EU).

142. *New EU Customs Regulation January 1, 2014*, Zacco, <http://www.zacco.com/new-eu-customs-regulation-january-1-2014> (last visited Feb. 13, 2015).

143. Caroline Casalonga and Karina Dimidjian-Lecomte, *Anti-counterfeiting 2014- A Global Guide*, World Trademark Review (April 24, 2014), <http://www.worldtrademarkreview.com/Intelligence/Anti-Counterfeiting/2014/Country-chapters/European-Union>.

144. Regulation No. 1352/2013 Art. 4, 2013 O.J. (L 341) 10, 11 (EU).

145. The list of 2014 EU trade agreements presented in this section is not inclusive.

146. *Overview of FTA and Other Trade Negotiations*, [http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_118238.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf) (last visited 1/15/15).

147. *Id.*

148. *Id.*

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4. *Ukraine, Georgia, and Moldova*<sup>149</sup>

On, March 21, 2014, the European Union signed an Association Agreement (AA) with Ukraine. The parties signed Comprehensive Free Trade Area (DCFTA) provisions on June 27, 2014. The EU signed all the same provisions with Georgia, and Moldova on June 27, 2014. The European Union and Ukraine are preparing for implementation of some AA parts. EU-Georgia and EU-Moldova AAs will be provisionally effective September 1, 2014.

5. *World Trade Organization (WTO) Green Goods Initiative*

In July 2014, the EU and 13 other members<sup>150</sup> of WTO launched negotiations aiming to “remove barriers to trade and investment in ‘green’ goods, services, and technologies.”<sup>151</sup> The first stage of negotiations “will focus on removing tariffs” on qualifying environmental products.<sup>152</sup>

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149. *Id.*

150. Australia, Canada, China, Costa Rica, Hong Kong (China), Japan, South Korea, New Zealand, Norway, Singapore, Switzerland, Taiwan, and the USA. See *The ‘Green Goods Initiative’: Liberalising trade in environmental goods and services*, European Commission (July 3, 2014), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1116>.

151. *Id.* At the first meeting, parties focused on agreeing upon a timetable for negotiations and participants’ goals.

152. *Id.*