ABA Section of International Law
INTERNATIONAL TRADE COMMITTEE NEWSLETTER
Volume II, No. 2

WELCOME

Welcome to the ABA International Trade Committee quarterly newsletter. The newsletter is intended to assist committee members stay up-to-date on current international trade issues and committee activities. The newsletter also provides a forum to discuss international trade ideas and opinions and we welcome article submissions. We continue to improve the newsletter and would enjoy hearing your thoughts on how we might improve further. Please contact Editor Amy J. Stanley (amyjstanley@gmail.com) with comments and questions.

This issue of the newsletter contains information on the recent activities of the ABA International Trade Committee, three excellent articles including: 1)Exports and Transshipment Violations, 2) The "dos" and "don'ts" regarding NAFTA Certificates of Origin, and 3) The economic impact of Brazil on international trade.

ABA INTERNATIONAL TRADE COMMITTEE NEWS

The committee hosted Christopher A. Padilla, Under Secretary for International Trade at a Breakfast at the Bar at King & Spalding LLP on February 6. Mr. Padilla discussed the Administration's 2008 trade agenda including pending FTAs, the status of Doha, the U.S.-China economic relationship, the increasing number of CVD cases against China, the recent 'uptick' in AD/CVD cases, CFIUS, and TAA.

The Trade Agreements and Rule of Law Working Group lead by Mélida Hodgson and Valentin Povarchuck presented a draft policy paper to the Committee entitled *Proposed Policy Statement on the Contribution of Free Trade Agreements to the Rule of Law.* The Policy Paper resolves "[t]hat the American Bar Association supports the negotiated liberalization of international trade in goods and services, through government to government free trade agreements, as a factor contributing importantly to the spread of the Rule of Law." The draft policy paper was presented to section leaders at the mid-year meeting and will be considered at the House of Delegates later this Spring. If you have any comments about this policy paper, or you wish to see the full draft, please email Matt Nicely (matthew.nicely@thompsonhine.com) or Mélida Hodgson (mhodgson@milchev.com).

After robust discussion regarding a proposed Bill that would amend the Court of International Trade's jurisdiction and also change the standard of review at the CAFC, the committee has decided to take no position with respect to the Bill. The

committee also decided that the Bill was unlikely to move through Congress any time soon. The Committee agreed to take no further action until it appears that there will again be movement on the Bill.

The Liquidation of AD/CVD Entries Working Group is looking for volunteers. Email Peggy Clark Peggy Clarke (Clarke-P@BlankRome.com); or Lynn Fischer Fox for more information at (Lynn.FischerFox@thompsonhine.com).

The Committee is endeavoring to put together two programs this Spring, one on related to Export Controls and one related to Trade Adjustment Assistance. If you have interest in either of these programs, please email Amy J. Stanley (amyjstanley@gmail.com).

If you have any questions about these working groups or programs, wish to participate in them, or wish to propose other topics for Committee activity, email Co-Chairs Matt Dunne (mdunne@gmail.com) or Matt Nicely (matthew.nicely@thompsonhine.com).

The next ABA International Trade Law Steering Committee Meeting will held on March 5, 2008 from 12:15-1:30 pm. The meeting location is Thompson Hine LLC, 1920 N Street, N.W. Suite 800 Washington, DC 20036-1600.

Please watch your email for more details.

IS YOUR MONEY GOING SOUTH?

By: Luis F. Martínez[1]

Summary

This essay will discuss a NAFTA shortcoming that results in the unfair payment of import duties, fines, surcharges, and antidumping duties. Many times funds for payment come from U.S. or Canadian companies with operations in Mexico. NAFTA´s flaw resides mainly in not contemplating legal-cultural differences between Mexico the U.S. and Canada, which result in Mexican customs officials invalidating NAFTA certificates of origin for formalistic reasons. These certificates of origin were completed by U.S. or Canadian company officers with practical-good faith-business-oriented minds, who are not accustomed to stringent formalistic interpretations of the law.

Preferential Import Duties for NAFTA Goods

The North American Free Trade Agreement (NAFTA) provides that a good that originates in any NAFTA country may be imported into another NAFTA country at preferential import duty rates. The preferential import duty for almost every type of product is currently 0%.

To access this preferential duty rate, the producer of the good must comply with the NAFTA Rules of Origin contemplated mainly in Chapter Four. Rules of origin are the guidelines to consider when a good is "made", "produced", "manufactured" in Canada, U.S. or Mexico. Rules of origin vary depending on the type of product, and can be quite difficult to comply with, but in essence they are economic principles that oblige the producer of the good to source raw materials and/or manufacture the good within the NAFTA region.

Once the producer is certain that it complies with the rules of origin, it must complete and sign a NAFTA certificate of origin. A certificate of origin is a document attesting that the good qualifies as NAFTA originating. The exporter is also allowed to complete and sign a NAFTA certificate of origin provided it has solid knowledge that the producer complied with the rules of origin.

For example, if a U.S. producer of bicycles wants to export bicycles to the Mexico (under tariff classification 8712.00.04) with a 0% NAFTA import duty rate (instead of the normal rate of 20%), then the U.S. producer must meet the rule of origin for

[1] Luis F. Martinez, Associate, Basham, Ringe y Correa, S.C., Head of the International Trade and Customs Practice, Monterrey office., Tel. (52 81) 8299-2100, Fax (52 81) 8299-2109, lfmartinez@basham.com.mx

bicycles.[2] Once the U.S. producer is certain it complies with the rule of origin for bicycles, then it must complete a NAFTA certificate of origin correctly, stating the bicycles produced meet the economic criteria and comply. The Mexican importer will then use the certificate of origin at the time of importation into Mexico to request NAFTA treatment.

Regulations to properly complete and sign a NAFTA certificate were negotiated by the three NAFTA parties and are contained in the treaty itself, and, in the case of Mexico, in the NAFTA Customs Rules published in Mexico´s Federal Gazette[3].

What Happens if the Certificate of Origin is Invalid?

Article 502(2)(a) of NAFTA provides that any Party (U.S., Canada or Mexico) may deny preferential duty treatment if "the importer fails to comply with any requirement" under Chapter V. One of the requirements of Chapter V is to have a *valid* NAFTA certificate of origin if requesting preferential duty treatment. If a certificate of origin is, for whatever reason, invalidated by a customs authority, then the importer must pay the normal duty rate, plus fines and surcharges, all in accordance with the domestic laws of the importing country.

In the case of Mexico, when the customs authority invalidates a NAFTA certificate of origin, officials try and collect the (i) normal duty rate, (ii) fines of 130% to 150% of unpaid duties, and, given the fact that the certificate is "invalid", the authority argues that the goods originate from a country that has an antidumping duty[4] (i.e. bicycles that originate from China!) and (iii) impose the applicable antidumping duty (144% for Chinese bicycles), plus (iv) surcharges. As a way of example, if the bicycle was worth $100, then after invalidating a NAFTA certificate of origin Mexican officials would try and collect $20 dollars of normal import duty, $30 dollars of fines, $144 of antidumping duties, plus surcharges for late payment, and all for a simple formalistic error! Paying more than $194 dollars in duties for a $100 dollar bicycle is prohibitive, to say the least.

Although the rules for completing a NAFTA certificate of origin are the same in the three NAFTA countries, they have not been interpreted equally. Interpretations by U.S. and Canadian customs officials typically focus on the substance of the certificate, while in Mexico customs officials, will focus on the formalities of the certificate of origin first, that is, they will first review if the certificate of origin was completed properly, in other words, they will review if the information in the certificate is absolutely clear and complete. If for example, the certificate states it is valid from "January 1st 2008 to January 1st 2009", then it would be invalidated by officials because certificates can only be issued for a period covering one year, and this date is actually one year plus one day (in other words it should of stated January 1st 2008 to December 31st 2008).

Based on our experience, we have detected at least 31 formalistic "errors" when the authority believes a certificate of origin to be invalid. Some examples are an incomplete address (i.e. not including the zip code), not printing the tax ID, description of the goods in the certificate of origin differs (even slightly) from the description of the goods in the invoice, not including the invoice number in the certificate if the certificate is good for one shipment and so on.[5]

---

[2] The rule of origin for 8712.00.04 bicycles requires a tariff shift from any heading to heading 8712 (except from 8714), or a shift from heading 8714 to 8712, provided there is a regional value content (meaning value done within the countries of North America) of 60% under the transaction value method or a value of 50% under the net cost method.

[3] *Resolución por la que se establecen las reglas de carácter general relativas a la aplicación de las disposiciones en materia aduanera del Tratado de Libre Comercio de América del Norte*", DOF September 15, 1995, as amended

[4] Article 66 of the Foreign Trade Law.

[5] For a complete list please contact Luis F. Martinez at: lfmartinez@basham.com.mx

This formalistic mindset is mainly as a result of the legal tradition in Mexico. While the U.S. and Canada has a Common Law tradition (except for Louisiana and Quebec), Mexico has a Civil Law tradition[6] which is typically more formalistic in nature then the Common Law. Explaining why countries with a Civil Law tradition are typically more formalistic is something beyond the scope of this article,[7] but it is important to state that forgetting to put a zip code on a document does not mean that the goods do not comply with the rules of origin.

Legal Consequences

Once a certificate has been declared invalid, it will be the Mexican importer who will be fined. Conversely, if the certificate of origin is declared invalid in Canada or the U.S., it will be the Canadian or American importer who will be fined. However, as is the case in many litigations, the funds to pay the (i) normal duty rate, (ii) fines of up to 150% of unpaid duties, (iii) antidumping duties and (iv) surcharges come from the parent company in the U.S. or Canada.

A considerable number of Maquiladoras in Mexico are having these difficulties where sister companies in the U.S. send raw materials, components or intermediate goods to Mexico to finish the assembly process. Many of the certificates of origin completed by the sister companies in favor of the Mexican subsidiary run the risk of being declared "invalid".

Legal Defense

A legal defense is available to the importer within the Mexican legal system, but it will be on the third, perhaps the forth tier of litigation that a Mexican judge or tribunal will hear the case and, if properly litigated, rule in favor of the importer. This means that the importer will have to spend perhaps three years litigating, and pay unrecoverable legal fees for trying to prove that forgetting to print the tax ID does not mean the merchandise is Chinese.

What to Do

The best way to avoid any contingency is to edudcate company employees in charge of completing certificates of origin on the rules on how to complete a NAFTA certificate. These rules are contained in Chapter V of NAFTA, the NAFTA Customs Rules[8] and the instructions on the back of the certificate and are the same in all three countries. It is also important to be very precise when completing the certificate and basically cross all the "t" and dot all the "i". To be on the safe side, contact your customs attorney or your customs broker when completing certificates of origin, they may have additional know-how and help you avoid a legal nightmare.

Please contact Luis F. Martinez with questions or comments regarding his article at lfmartinez@basham.com.mx

EXPORT MISDIRECTION: CRACKING DOWN ON THIRD COUNTRY TRANSSHIPMENT VIOLATIONS

By: Jordan Collins[9]

Transshipment Concerns Aggressively Pursued

Towards the end of 2007, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) reached two civil settlements with U.S. companies that allegedly violated the Export Administration Regulations (EAR). In addition to the two settlement agreements, BIS issued a Temporary Order denying export privileges to a Dutch company. In a parallel proceeding, a criminal complaint was filed against the Dutch company by the Department of Justice (DOJ) for violating US embargoes and making false statements on export control documents.

[6] Some Common Law countries include the Canada, India, Nigeria and United Kingdom, and Civil Law counties include Austria, Brazil, Netherlands, and Japan, to name a few.

[7] For an excellent explanation on how a Civil Law system works refer to "*The Civil Law Tradition; An Introduction to the Legal Systems of Western Europe and Latin America*" by JOHN HENRY MERRYMAN, Stanford University Press (1985).

[8] For a complete version of the NAFTA Customs Rules published in the Federal Gazette of Mexico contact the author.

[9] Jordan Collins, Esq. is with the Overseas Private Investment Corporation.

What makes these cases noteworthy is the common theme - in all three cases, the exporting company tried to disguise prohibited exports to Iran by transshipping the goods through an intermediate destination prior to reaching their ultimate end-user. While transshipment is a commonly used practice in legitimate trade, transshipment can also serve as a strategy to disguise exported goods intended country of destination.

Commerce's Civil Export Enforcement Initiatives

To help combat transshipment violations, both the Department's Commerce and Justice have made export control enforcement a growing priority. In 2003, BIS launched the Transshipment Country Export Control Initiative (TECI). According to BIS, TECI was established because:

"The illicit transshipment, re-export, and diversion of goods and technologies in international commerce compromise the effectiveness of U.S. trade agreements and export control laws. In so doing, such illicit transshipments harm U.S. industry, threaten U.S. security, weaken confidence in the international trading regime, and undermine international efforts to liberalize trade."

BIS has identified a number of countries that are common transshipment hubs, including the United Arab Emirates (UAE), Singapore, Hong Kong, Thailand, Malaysia, Cyprus, Malta, and Panama. A primary country exporters use to illegally transship goods in the Middle East is the UAE. While the UAE is a growing market for legitimate trade, because of its proximity to embargoed countries, the UAE is commonly used by exporters seeking to circumvent U.S. sanctions on Iran, Sudan and Syria.

Over the past few years, the U.S. government has increased pressure on the UAE and other common transshipment countries to clamp down on prohibited transshipments by adopting domestic export control laws. One method the U.S. applied this pressure was by proposing amendments to the EAR in early 2007 that would designate countries as "Destinations of Diversion Concern" in Country Group C. The proposal stated that countries in Country Group C would potentially result in: (1) more license applications required for exports to such countries, (2) more stringent license review policies, (3) delays in authorizations due to increased end-use checks, and (4) decline of authorizations.

As a result of U.S. pressure, UAE's government subsequently passed a "stringent new export control laws that included stiffer penalties for parties involved in the diversion of controlled shipments."[10]

Department of Justices' Criminal Export Control Initiatives

The Department of Justice (DOJ) handles all export-related criminal cases. In June 2007, DOJ appointed Steven W. Pelak, an 18-year veteran federal prosecutor, to serve as the Justice Department's first-ever National Export Control Coordinator (NECC) to improve the investigation and prosecution of illegal exports of U.S. arms and sensitive technology. The NECC is detailed to the Counter-Intelligence Section of Justice's National Security Division. Mr. Pelak is also responsible for ensuring full coordination between the Justice Department and the many other U.S. law enforcement, licensing and intelligence agencies that play a role in export enforcement.

The creation of the NECC underscores a trend towards heightened export control enforcement. The U.S. government views export controls as vital tools to protect national security, the last several years witnessed a consistent increase in government resources focused on export enforcement.

US Sanctions on Iran

Exports and re-exports of U.S. origin goods to Iran are subject to comprehensive export controls, due to the nation's status as an embargoed country since

[10] For an overview of the new UAE Regulations, see http://www.wam.org.ae/servlet/Satellite?c=WamLocEnews&cid=1188290221292&p=1135099400295&pagename=WAM%2FWamLocEnews%2FW-T-LEN-FullNews. The law authorizes penalties of up to imprisonment for one year and/or fines totaling over US $270,000 for violating the UAE's export control law.

1977.[11] Such restrictions are governed by regulations issued by both the Treasury Department's Office of Foreign Assets Control (OFAC) and Commerce's Bureau of Industry and Security (BIS).

As a general rule, pursuant to OFAC's Iranian Transactions Regulations[12], U.S companies and individuals are prohibited from exporting all U.S.-origin goods, technology or services directly or indirectly to Iran.[13] However, exceptions have been carved out of the regulations for certain types of humanitarian products, including medicines, medical devices and agricultural commodities which can be exported to Iran upon the receipt of a one-year specific license issued by OFAC pursuant to the Trade Sanctions Export Reform and Enhancement Act of 2000 (TSRA).[14]

The International Emergency Economic Powers Act (IEEPA) is the implementing legislation for most of the economic sanctions programs administered by OFAC.[15] IEEPA was recently amended by The IEEPA Enhancement Act (Enhancement Act) was signed into law by President Bush in October 2007.[16] The Enhancement Act increased the maximum civil and criminal penalties for violations of economic sanctions imposed under IEEPA, raising the civil penalties to $250,000 or twice the value of the underlying transaction. The criminal penalties have risen from $50,000 and ten years of imprisonment to $1,000,000 and twenty years. This is the second such increase in IEPPA penalties in two years. In March 2006, the maximum civil penalty for violations of IEEPA-based economic sanctions increased from $11,000 to $50,000.[17]

Concurrently, BIS governs the re-export of U.S. origin goods to Iran. Under 15 C.F.R. §764.7 of the EAR, an exporter must obtain a license from the BIS to legally export goods to Iran. However, 15 C.F.R. 742.8(b)(1) states:

"(The) BIS is required to deny licenses for items controlled to Iran for national security or foreign policy reasons absent contract sanctity or a Presidential waiver. License applications for which contract sanctity is established may be considered under policies in effect prior to the enactment of that Act. Otherwise, ***licenses for such items to Iran are subject to a general policy of denial*** (Emphasis Added)."

Recent Domestic Enforcement Proceedings

Turning to the recent cases, Jennifer L. Reul-Marr, a resident of Ridgefield, Connecticut, was alleged by BIS to be a co-conspirator involving the re-export of dental equipment (classified as EAR99 under the EAR regulations) to Iran. Ms. Reul-Marr allegedly conspired to export the dental equipment by transshipping the goods to the UAE, an illegal export activity without a proper license.

According to BIS, Ms. Reul-Marr failed to obtain the proper license for such an export, as required by law. Subsequently, BIS brought an enforcement case against Ms. Reul-Marr and issued a proposed charging letter. Ms. Reul-Marr agreed to pay $7,700 to settle this matter. Because Ms. Reul-Marr's proceeding was instituted before the IEEPA Enhancement Act was signed into law, it was not applicable to her proceeding.

Within the same industry, Centerpulse Dental, Inc. engaged in similar conduct on a larger scale. Centerpulse was charged with 52 counts of

[11] On May 6, 1995, President Clinton signed Executive Order 12959, pursuant to the International Emergency Economic Powers Act (50 USC § 1705) as well as the ISDCA, substantially tightening sanctions against Iran.

12 See 31 C.F.R. § 560. President Reagan, on October 29, 1987, issued Executive Order 12613 imposing a new import embargo on Iranian-origin goods and services. Section 505 of the International Security and Development Cooperation Act of 1985 ("ISDCA") was utilized as the statutory authority for the embargo giving rise to the Iranian Transactions Regulations.

[13] For an overview of OFAC Regulations involving sanctions against Iran, see http://treas.gov/offices/enforcement/ofac/programs/iran/iran.pdf

[5] Pub. L. No.106 387. (October 28, 2000).

[15] 50 USC § 1701, et al.

[16] Pub. L. No. 110-96 (October 17, 2007).

[17] Pub. L. No. 109-177 (March 9, 2006).

exporting dental equipment without the prerequisite governmental licensing required pursuant to both the EAR and OFAC regulations. Zimmer Dental, Inc. was held liable for Centerpulse's actions as successor-in-interest, and therefore assumed liability for Centerpulse's alleged export violations.

Like Ms. Reul-Marr, Centerpulse allegedly attempted to export dental equipment to Iran by transshipping the goods through the UAE. Centerpulse/Zimmer Dental received a $175,000 civil penalty under the terms of the settlement agreement. A $75,000 portion of that penalty was suspended for one year, and will be waived if Zimmer Dental commits no further violations of the EAR. Failure to comply with the terms of the settlement agreement would result in the full enforcement of the penalty and the denial of all export privileges for one year.

Although it is not clear whether Ms. Reul-Marr and Centerpulse knew that obtaining a TSRA license from OFAC would have allowed them to legally export dental equipment to Iran, both Ms. Reul-Marr and Centerpulse could have avoided the significant expense, time, and the negative publicity associated with their cases if a specific license had been obtained.

Foreign Entities & Export Proceedings

BIS took a different tactical approach to thwarting a third company from exporting goods to Iran via transshipment through UAE and Cyprus. Aviation Services International, B.V., a Dutch company located in Heerhugowaard, Netherlands, as well as its subsidiaries and owners individually, were criminally charged with five counts of willful export and attempted transshipment of U.S. origin products to Iran via Poland. Aviation Services allegedly employed elaborate schemes that involved several distinct transactions.

One transaction involved controlled receivers and video transmitters. The respondents claimed that the end-user was the Polish Border Control Agency (PBCA), and the goods were to be used in unmanned aircraft vehicles operated by the PBCA. BIS ultimately determined the end-user was not in fact Poland, but rather Iran. Such a determination was made obvious by fact that the PBCA did not have any unmanned aircraft vehicles in its arsenal, nor had it ever contracted with Aviation Services. Instead, Aviation Services provided false information to the U.S. government, stating that the end-user was Lavantia, Ltd., a Cyprus-based company, known as a transshipment intermediary for Iranian businesses.

Even more covertly, Aviation Services used a shell corporation, Delta Logistics, to facilitate the exportation of polymide from the U.S to Iran. Again, Aviation Services provided false information to the U.S. in their efforts to illegally transship goods subject to the EAR and ITR to Iran. The Aviation Services case is an excellent example at different techniques employed by a company to circumvent U.S. export law. An ex parte adjudicatory proceeding conducted by BIS determined that the issuance of a Temporary Denial Order (TDO) was warranted pursuant to 15 C.F.R § 764.6(c) of the EAR.[18]

Based on the evidence provided the TDO was granted by the administrative law judge and Aviation Services had its export privileges denied for 180 days.[19] The criminal enforcement case appears to remain pending as of this writing.

Conclusion

The recent string of cases prosecuted by BIS and DOJ highlights the ongoing attention given to transshipment practices by companies attempting to export goods to Iran without proper governmental

18 BIS may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR maybe issued upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder. A violation may be "imminent" either in time or in degree of likelihood. To establish grounds for the temporary denial order, BIS may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. 15 C.F.R. § 766.24(a),(c).

19 15 C.F.R. § 764(b)(4).

approval and licenses. Based upon BIS, OFAC, and DOJ's efforts, the U.S. government is making it evident that they will continue to pursue transshipment violations to the full extent of the law, regardless of the daunting task enforcement of these complex transactions pose.

Please contact Jordan Collins at jordan.collins@gmail.com with comments or questions regarding his article.

INTERNATIONAL ECONOMIC LAW AND DEVELOPMENT: WHERE DOES BRAZIL STAND?

By Luciana Vidal, Carla Junqueira, Marina Carvalh and Fernanda Bezerra[20]

One may say that the notion of economic development has always and today continues, to an increasing extent, to contemplate the aspects of a country almost in its generality. There is no way of segregating culture from the economy, education from the economy, employment from the economy, leisure from the economy, criminality from the economy, tourism from the economy and so on. In other words, economic-trade relations orient political and government life and, currently, in a dominating manner, the private life of a country, as a whole. Consequently, the role of grandiose multinational companies is expanding greatly, as though they dictate government plans and negotiation strategies. International economic law, therefore, is in quest of the adjustment of the rules in this world of fights of the enormous, adapting its rules to the demands that this market imposes, with the aim of achieving healthy world economic integration.

It is a known fact that life in a world immersed in competition, competitiveness and liberty in private business enterprise does not necessarily result in an equalitarian status and pursuit of a trade/economic balance among the characters living in this field of business. The intervention of the state, even if in a very direct manner, is not capable of changing the various forms of exacerbations that are observed at the level of world economic life, insofar as the pursuit for development does not permit the existence of barriers on the acceleration of private wealth, it being an accepted fact that, the success of one is the lever of the other.

Accordingly, the symbiosis to which the world economy is submitted these days, through the integration of the giant actors of the modern trade scenario – the large multinational companies – are drawing the States into increasingly denser and more broader negotiations and, especially, with a high level of complexity due to the various aspects that they need to be attentive to, with each accordant party emphasizing whatever is required to avoid affecting the highly coveted soundness of its domestic economy.

Brazil is undoubtedly inserted in this context of world competitiveness, whereas its operations occur in a somewhat obscure manner. Operating as the greatest negotiator in the international economic process of its continent, is it among the last of the principal countries or first of the secondary ones? With the recent surveys and new data on development indices, country risk and growing economy would it be better for Brazil to be classified as a recently-inaugurated developed country or continue consolidated as a key figure in the group in development? Does the Brazilian State, in the modern international economic complex, continue to lead accessory meetings to the international trade framework, or is it at the base of the substantial ladder?

International economic law delimitates nuances that are more than fundamental for the successful outcome of negotiations between countries or between any other persons susceptible of assuming obligations in the field of international economic relations. In this respect, this field of law must observe not only the harmonization of the rules and their ample application, but also the inclusion of the peculiarities of each character inserted in the international community, be they cultural, economic or social. Only in this way, with rules to be followed and rights to be claimed, may one speak of

[20] International Trade Team – Barretto Ferreira, Kujawski, Brancher e Gonçalves Sociedade de Adrogados, Brazil

progression in these extensive and intricate negotiation processes, thereby promoting the development of participant nations.

Thus, the international economic actors shall owe obedience to the legal rules, resulting from the growing interconnection of the world economy, in order for them not to come up against sanctions and embarrassments in their militancy within the international economic-trade body. To contextualize, or better, to evaluate the Brazilian State in this group is of vital importance, elevating its attributes in the practical world economic life, making its interests re-emerge and receiving the reception of the negotiator elite toward its desires.

It is necessary to analyze the concrete profits for those States that find themselves in this transitory classification march, pondering the effective consequences of this process in their economic realities. For example, the consistent effects of these new inclinations towards the gradations concerning the economic development of a country, called for by growing and intense international trade relations, need to be observed, as can be verified in the current scenario of strong emerging economies, including, principally India, Russia, Brazil and China.

According to data from the World Bank (IBRD), today the Brazilian State occupies seventh place in the world economy ranking of 146 countries. However, if we take into account the purchasing power parity, in which Brazil accounts for half the economy of South America, it moves up one place, to the sixth largest world economy, along with the United Kingdom, France, Russia and Italy. The United States maintained the rank of the largest world economy, followed by China, which rose from fourth to second place. Overall, world economic transactions generated US$ 55 trillion in goods and services in 2005. Of this total, it is relevant to mention, 40% came from developing countries – China, India, Russia, Brazil (Brics) and Mexico accounted for almost 20%.

This reveals the importance of the incessant race of these "debuting" economies in the contemporary market of goods and services. There is no longer any way of ignoring the important role that these States have been playing in the international trade scenario, and the consequent emergence of new questions, plans to be outlined and conducts to be measured. By being "promoted", Brazil, on the other hand, will be relinquishing certain "special privileges" that were provided to the former group. A clear example is the ceasing of the enjoyment of the clause that offers special treatment to developing countries, set forth in the General Agreement of Tariffs and Trade – GATT, which permits tariff preferences by the developed countries, with the purpose of cooperation in negotiations to avoid total disparity between the parties. This occurrence will greatly affect active Brazilian trade, since many of our trade enjoy, or even depend on these benefits.

Therefore, there is no way of avoiding the discussion which will gradually go gaining force until such time as a position will be non-postponable. The Brazilian State, with its heated economy, is only expanding its business perspective, whether dealing with neighbors or with other nations that are merely more distant geographically. Brazil is certainly living a moment of ascension, of warmth in its trade relations, being incorporated into the world economy, a highlight in Latin America, the greatest name in Mercosur, a figurant among the G-20 leaders, increasingly more active in the South-South trade, which encompasses Africa and part of Asia, growing bilateral and regional agreements, strategic governmental visits, among many other forms of economic growth. It is sufficient to know whether, because of being in this situation, it will continue to take advantage of its status, with the various benefits, and not disregard its role of command, in the current scenario to which it belongs, in order to pursue the new qualification in the old solid world economies' zone.

Please contact the authors at: junqueira@bkbg.com.br with comments or questions.

UPCOMING EVENTS

March 5, 2008, ABA International Trade Committee Meeting: From 12:15pm-1:30 held at the offices of Thompson Hine LLP, 1920 N Street, N.W. Suite 800 Washington, DC 20036-1600.

April 1-April 5, 2008, ABA International Law Section Spring Meeting in New York.

International Law News If you wish to submit an article to the Section's Quarterly Newsletter, International Law News, deadlines for upcoming publications are as follows:

March 14, 2008, Submissions Due for the International Law News Volume 37, No. 3, Summer 2008. The focus of this edition is "Asia."

March 31, 2008, Submissions Due for the International Law News Volume 37, No. 4, Fall 2008 The focus of this edition is "Section of International Law – 130 years serving as the ABA's gateway to international practice."

FINALLY…

If you wish to submit an article for the International Trade Committee Newsletter, the deadline for the spring volume is May 9, 2008. All articles should be substantive in nature, under 1200 words, and relevant to current international trade events. Email ABA International Trade Committee Editor Amy J. Stanley (amyjstanley@gmail.com) for more information.