SPC&B Update

July 9, 2014 - In This Issue:

CBP Will No Longer Allow FTA Claims to be Filed Via Protest

It has been understood for some time that for Free Trade Agreements such as NAFTA or CAFTA, which provide for post-importation claims within one year of entry, the only method of filing such claims involved submitting a Section 520(d) claim and protests were not a viable option. Until recently, however, for other FTAs such as the U.S.-Singapore and U.S.-Morocco FTAs, CBP has allowed importers to file either Post Entry Amendments (PEAs) prior to liquidation or protests after liquidation. CBP has now reviewed this practice and determined that allowing protests in this situation was contrary to decisions rendered by the Court of International Trade holding that if an FTA claim was not made at time of entry or before the entry was liquidated, a claim could not be made by protest.

Although protests are no longer an option, we have confirmed that importers can still file PEAs for duty free treatment under FTAs that do not have the 520(d) option, but they must be filed before the entries have liquidated.

Companies Doing Business in California Targeted Under "Made in USA" False Advertising Law

Recently a number of apparel companies have received letters that threaten to bring class action lawsuits for labeling their garments as made in the US when they contain materials or components that are foreign-made. In this regard, the California law is more stringent than the federal country of origin marking requirements, as it prohibits the use of the words "Made in U.S.A.," "Made in America," "U.S.A.," or similar words when a product contains "any article, unit, or part thereof" that has been made outside of the U.S.

Apparently the use of threatening letters under Proposition 65 has been so successful it is now being extended to the false advertising law. Even qualified claims such as "Made in USA of Imported Materials" have prompted threatening letters because of the reference to USA, even though such a label is in complete compliance with federal law.

New legislation had been proposed which would have changed the rule to a substantial transformation rule with a 90% domestic content threshold, but the bill died in committee. It remains to be seen whether the state legislature takes up the issue again.

For further information on FTA claims and labeling requirements, please contact Gail T. Cumins at gcumins@spcblaw.com, Alli Baron at abaron@spcblaw.com, or Donna Shira at dshira@spcblaw.com, or call us at 212-425-0055.

Sharretts, Paley, Carter & Blauvelt, P.C.
75 Broad Street, 5th Floor
New York, NY 10004
212-425-0055
customs@sharretts-paley.com

For more than sixty years, Sharretts, Paley, Carter & Blauvelt, P.C. has been one of the preeminent firms in the fields of global customs law, international trade law, and compliance. Our mission is to provide our clients with the personalized, focused
service of a small-sized firm while offering the advantages of a top national law firm.