

# “Who’s Who” in Customs and International Trade Law

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**T**he legal landscape of customs and international trade law can be mysterious even for those who navigate it every day. As with other federal government agencies, agencies involved in international trade are encountering new names and missions. This guide is for attorneys whose practice areas only occasionally bring them before these specialized courts and agencies. This is not a guide to every player in the field of international trade law, but only to the major ones with which all attorneys should be generally familiar.

## United States Trade Representative

The Office of the United States Trade Representative (USTR) is the international point of contact between the United States and foreign countries on most bilateral and multilateral trade issues. The USTR's office is an executive branch agency, and the USTR (currently Ambassador Robert Zoellick) serves at the pleasure of the President. For reasons of international etiquette, the USTR is an ambassador.

The USTR is charged, in part, with negotiating bilateral and multilateral trade agreements on behalf of the United States. As of August 2004, the United States had free-trade agreements in operation with Canada, Chile, Israel, Jordan, Mexico, and Singapore. The United States had also completed, and Congress has approved, free-trade agreements with Australia and Morocco. Both agreements are awaiting approval by each partner and are expected to be in operation as of January 1, 2005. Another category of free-trade agreements are those that have been negotiated and signed but await approval by Congress. Agreements with the Dominican Republic and the “Central American Five” (Guatemala, Honduras, Nicaragua, El Salvador, and Costa Rica) fall into this category. That agreement, known as the “Dominican Republic-Central American Free Trade Agreement (DR-CAFTA),” will create the second-largest free-trade zone in Latin America for U.S. exports. Finally, other trade agreements are at various stages of negotiation. These include negotiations with Panama, Bahrain, “the Andean Four” (Columbia, Peru, Ecuador, and Bolivia), Thailand, and the South African Customs Union (Botswana, Lesotho, Namibia, Swaziland, and South

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Africa). In addition, the United States still seeks to open additional markets with a Free Trade Area of the Americas (FTAA) by 2005, and a Middle East Free Trade Area by 2013. Information on the status of current negotiations and other activities of the U.S. Trade Representative is available at [www.ustr.gov](http://www.ustr.gov).

The USTR is also the U.S. presence at the World Trade Organization (WTO). This presence is twofold. First, the USTR prosecutes complaints against the allegedly unlawful trading practices of other nations, and it defends complaints from other nations against U.S. trade laws and practices. For example, current complaints against the United States include adverse rulings on the 1916 Antidumping Act, the “U.S.-Cuba Trademarks Protection Act,” and the Continued Dumping and Subsidy Offset Act of 2000. Second, the USTR is actively engaged in new trade negotiations in the WTO's “Doha Round” (named for the Ministerial Conference held in Doha, Qatar in 2001, which set the agenda for subsequent WTO negotiations). Although the Doha Round had stalled when negotiators met in Cancun, Mexico, the negotiations appear to have been revived at the end of July 2004 when the USTR and the European Union agreed to cut billions of dollars in export credits and subsidies on agricultural commodities. These cuts were made in return for eventual cuts in market access restrictions for U.S. goods entering some markets, as well as reductions in tariffs. However, this agreement sets forth only part of a concession necessary to continue to negotiate, rather than any final agreement. As such, the conclusion of the Doha Round remains uncertain. Current information on the Doha Round, and trade complaints involving the United States, is available at [www.wto.org](http://www.wto.org).

## Bureau of Customs and Border Protection

The Bureau of Customs and Border Protection (BCBP), part of the Department of Homeland Security, was formerly known as the Customs Service of the United States when it was part of the U.S. Department of the Treasury. The BCBP performs various tasks to support homeland security, facilitate international trade, perform inspections at ports of entry, and to interdict illegal drugs and other contraband. Customs enforces a wide array of laws, ranging from the Andean Trade Preference Act to Free Trade Zones. Further information, including a link to customs rulings and other legal resources, is available at [www.customs.gov](http://www.customs.gov).

### United States International Trade Commission

The International Trade Commission (ITC) is an independent quasi-judicial federal agency with investigative, adjudicative, and research responsibilities. Six Commissioners comprise the ITC. The President appoints the Commissioners for nine-year terms, and each Commissioner's term is staggered. By law, no more than three Commissioners may be members of the same political party. In addition to appointing the six Commissioners, the President appoints from the six a chairman and a vice chairman, who each serve a two-year term in their respective capacities.

The ITC has three core functions:

- **Helping administer U.S. trade remedy laws.** With respect to unfair trade, the ITC determines whether a domestic industry has been injured by imports that have been dumped in the U.S. market or imports that have benefited from unfair subsidies. Working with the International Trade Administration (ITA) of the U.S. Department of Commerce, imported merchandise that is being dumped or unlawfully subsidized may be subject to additional antidumping or countervailing duties. The ITC also investigates unfair methods of competition and unfair acts in the importation or sale of goods into the U.S. market that may infringe on U.S. intellectual property. The ITC also investigates surges of fairly traded imports that injure or threaten to injure U.S. industries in global and bilateral safeguard investigations.
- **Providing the Administration and Congress with independent research and analysis.** The ITC is expert in compiling trade data and statistics, and it provides such compilations to Congress, the Administration, and the public. Aside from data compilation, the ITC also analyzes major trade-related issues, estimates the economic effects of proposed trade agreements, and reviews the competitiveness of specific industries. In terms of policy, the ITC routinely provides support to members of Congress, the USTR, congressional committees, interagency committees, and U.S. delegations to multilateral trade organizations, such as the WTO, as these individuals, agencies, and organizations stake out trade-related policy positions.
- **Maintaining the Harmonized Tariff Schedules of the United States.** These tariff schedules are used by the Bureau of Customs and Border Protection (BCBP) (formerly known as the Customs Service) to determine the applicable rates of duty, eligibility for duty exemption under specialized trade programs, and other issues, such as quota categories. The ITC

does not determine the classification of specific merchandise, but it maintains the tariff schedules that the BCBP uses for that purpose.

Further information about the U.S. International Trade Commission is available at [www.usitc.gov](http://www.usitc.gov).

### United States Department of Commerce

The U.S. Department of Commerce is an administrative agency with broad and diverse trade-related functions. Within the Department of Commerce, the International Trade Administration (ITA) addresses unfair trade as well as promotes U.S. exports of manufactured goods, non-agricultural commodities, and services. The Import Administration, an office within the ITA, investigates unfair trade practices. Specifically, the Import Administration determines whether foreign companies are violating U.S. and international law by "dumping" products in U.S. markets at below their home-market prices. The Import Administration also investigates whether foreign governments are unfairly subsidizing foreign companies. If the Import Administration determines that either one or both of these unfair trade practices is occurring, it will order Customs to implement a tariff to offset the benefits, provided that the ITC has also determined that the unfair trade practice injured the competing domestic industry. Also within ITA, the offices of Trade Development and Market Access and Compliance both work to ensure foreign-market access to domestic companies and industries, as required by negotiated trade agreements. Further information on the ITA is available at [www.ita.doc.gov](http://www.ita.doc.gov).

Also, within the U.S. Department of Commerce (but separate from the ITA), the Bureau of Industry and Security (BIS) works to ensure that international trade and national security co-exist through regulating U.S. exports. Specifically, BIS implements U.S. export control policy on products and technology that are "dual use," or have predominantly civilian uses, but also have actual or potential military, proliferation, and terrorism-related applications. BIS, through a classification and licensing regulatory scheme aims to ensure that exports from the United States and re-exports of U.S.-origin items from third countries do not endanger national security. The challenging task for BIS is accomplishing its objectives without impeding the flow of legitimate international trade. Further information on the BIS is available at [www.bis.doc.gov](http://www.bis.doc.gov).

Finally, the Department of Commerce is home to the Bureau of Economic Analysis, which provides comprehensive statistics on the U.S. economy and the Bureau of the Census, which conducts throngs of surveys as well as the decennial census. Both bureaus compile statistics that help shape the Administration's positions on internation-

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2 • Published in *International Law News*, Volume 33, Number 4, Fall 2004.

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al trade policy. These statistics and further information are available at [www.bea.doc.gov](http://www.bea.doc.gov).

### **United States Court of International Trade**

The United States Court of International Trade (CIT) is a federal court with national jurisdiction. It is statutorily empowered to hear cases in other nations, although it has not done so. It is on the same level as a federal district court. The court is empowered with all powers in law and equity generally available to district courts. CIT judges serve during good behavior and often sit by designation in other federal district and circuit courts. The CIT reviews antidumping and countervailing duty determinations made by the U.S. International Trade Administration and the U.S. International Trade Commission. It also acts as a trial court for challenges made to classification, valuation, and other rulings made by the Bureau of Customs and Border Protection (BCBP). Other areas include certain determinations relating to foreign trade zones and appeals from denials of trade adjustment assistance for U.S. workers who are injured by increased imports of a particular product.

The court sits in New York. Because of the court's unique jurisdiction, however, its procedures are designed to accommodate the needs of parties not located in New York. For example, the court is preparing a new program to allow the electronic filing and review of all documents (except confidential documents).

Information about the court, including copies of decisions and information on admission to practice before the court, is available at [www.cit.uscourts.gov](http://www.cit.uscourts.gov). Information

about the Customs and International Trade Bar Association (CITBA), a specialized bar for practitioners before that court, is available at [www.citba.org](http://www.citba.org).

### **NAFTA Panels**

The North American Free Trade Agreement (NAFTA) provides an alternative appellate mechanism for trade disputes. Instead of appealing an antidumping or countervailing duty determination to the U.S. Court of International Trade, affected litigants from Canada or Mexico can call for the establishment of a NAFTA arbitration panel under Chapter 19 of the Agreement. Other disputes that can be brought using NAFTA include investor disputes under Chapter 11. Further information is available from the NAFTA Secretariat at [www.nafta-sec-alena.org](http://www.nafta-sec-alena.org).

### **United States Court of Appeals for the Federal Circuit**

The U.S. Court of Appeals for the Federal Circuit, which sits in Washington, D.C., is known as the nation's patent court. For international trade attorneys, the court is the body that hears appeals from final decisions of the United States Court of International Trade. Further appeals can be made to the U.S. Supreme Court.

The Federal Circuit also hears direct appeals from exclusion orders issued by the U.S. International Trade Commission in cases alleging that imported merchandise infringes a valid U.S. patent. Those ITC determinations bypass the U.S. Court of International Trade and go directly to the Federal Circuit. Further information about the Federal Circuit, including information on admission to practice before that court, is available at [www.fedcir.gov](http://www.fedcir.gov). ♦