

C.V. Starr Lecture

A Colloquy Commemorating the 25th Anniversary of the U.S. Court of International Trade February 22, 2006

On February 22, 2006, the Center for International Law held a colloquy where participants examined the work of the United States Court of International Trade since its establishment in 1980 and also discussed current issues and trends in the administration and enforcement of national and global trade regulations.

In his remarks, Thomas J. Aquilino, Jr., who is Senior Judge of the Court of International Trade, discussed issues in amending the course of judicial review in international trade cases in the United States. He suggested that the U.S. Court of Appeals for the Federal Circuit discontinue its jurisdiction in reviewing decisions issued by the Court of International Trade and leave judicial review to three-judge panels from the latter judicial body. He acknowledged that such a determination would require enabling legislation and amendments to the Court's own statute, the Customs Courts Act of 1980.

Barbara S. Williams, as the Attorney-in-Charge of the International Trade Field Office of the United States Justice Department, gave an overview of the work of her office whose main responsibility is to represent the United States government in trade litigation cases on behalf of agencies (such as the Customs Service) at the U.S. Court of International Trade. She pointed out that valuation cases – where parties such as importers challenge how their products are appraised for duty purposes – are the Office's "bread and butter" cases. In recent years, however, Williams said that most of Office's caseload has involved whether the Customs Service has properly followed customs rules and statutes (e.g. whether that agency has followed a process in informing importers and other parties of changes in the way it treats and classifies certain goods). She said that these particular cases have become the largest and most contentious area of litigation facing her office.

Amelia Porges, who was once a high-level government official at the Office of the United States Trade Representative and now works at the law firm of Sidley Austin LLP, examined the role of the World Trade Organization (WTO) in global trade. She noted that the United States has lost several disputes concerning anti-dumping and other trade remedy cases because it rarely refuses to settle these kinds of cases even though "it knows that it's going to lose." Legal practitioners have noted that, in recent years, the majority of trade cases heard by the U.S. Court of International Trade are remedy-related, as opposed to tariff-classification cases, which made up the majority of cases over 20 years ago.

Andreas Lowenfeld, who is the Herbert and Rose Rubin Professor of International Law at NYU School of Law, described how the growing importance of world trade has brought into conflict various international bodies that help to regulate commerce and settle trade disputes. He noted that, for instance, the rulings of dispute settlement proceedings under the aegis of the WTO have been inconsistent with the conclusions reached by arbitration panels formed under NAFTA concerning the very same disputes. Lowenfeld cited U.S. restrictions on sugar imports from Mexico as an example not only of international forum-shopping to resolve trade disputes but also a reflection of a lack of consistent and reliable outcomes and precedents among different international judicial forums.