

Client Advisory

CAFC Reverses China Textile Safeguard Injunction

June 2005

The U.S. Court of Appeals for the Federal Circuit ("CAFC"), on Tuesday, reversed an injunction issued by the U.S. Court of International Trade ("CIT") that had prohibited the U.S. government from considering petitions to invoke safeguards on textile imports from China where the petitions were based on a threat of market disruption.

In its decision, the CAFC cleared the way for the Committee for the Implementation of Textile Agreements ("CITA") to consider petitions requesting consultations with China concerning textile imports, "based on data suggesting a threat of market disruption, rather than data describing current market disruption."

The plaintiff in the case, the U.S. Association of Textiles and Apparel ("USA-ITA"), had argued that CITA had overstepped its mandate to "supervise the implementation of all textile trade agreements," as well as violated its own published procedures in accepting threat-based petitions. Although the CAFC's first action was to find that the USA-ITA would be unlikely to adequately demonstrate that the issue was ripe for adjudication, the court went on to reject both contentions in a stinging opinion.

With reference to the claim that the textile safeguard provisions of China's accession agreement to the WTO did not qualify as a textile agreement, the CAFC dismissed the claim, finding that the plaintiff's argument "utterly fails to persuade, if indeed it is not also frivolous." The court noted that the plaintiff had failed to support its claim "with any reasoning, evidence, or precedent."

With regard to the claim that CITA had violated its own published procedures, the CAFC found that CITA was well within its bounds to consider petitions from private parties that based their requests on threats of market disruption rather than current market disruption since the procedures were intended to implement the accession agreement which specifically provided for threat-based petitions. The court held that the USA-ITA had "failed to demonstrate even a fair chance of success" on its claim.

Because the question before it was only an appeal from the issuance of an injunction, the CAFC's decision did not dismiss the case, which continues before Judge Richard Goldberg of the CIT. However, given the considerable disdain the CAFC expressed for USA-ITA's arguments, in the event the remaining issues in the case should be decided against the government, they will almost certainly be appealed.

We Can Help

If you have any questions about the CAFC ruling or other customs and international trade issues, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below:

	Direct Dial	Email
Peter J. Battaglioli	202.625.3500	peter.battaglioli@kattenlaw.com
Millissa A. Caswell	312.577.8387	millissa.caswell@kattenlaw.com
David M. Dunbar	312.902.5315	david.dunbar@kattenlaw.com
Patricia M. Hanson	312.902.5496	patricia.hanson@kattenlaw.com
Tammie Goldstein Krauskopf	312.902.5314	tammie.krauskopf@kattenlaw.com
Eric R. Rock	312.902.5228	eric.rock@kattenlaw.com
Kirk Ross	312.902.5397	kirk.ross@kattenlaw.com
David P. Sanders	202.625.3720	david.sanders@kattenlaw.com
Mark S. Zolno	312.902.5436	mark.zolno@kattenlaw.com

Published for clients as a source of information. The material contained herein is not to be construed as legal advice or opinion.

CIRCULAR 230 DISCLOSURE: Pursuant to Regulations governing practice before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

©2005 Katten Muchin Rosenman LLP. All rights reserved.

KattenMuchinRosenman LLP Locations

www.kattenlaw.com

401 S. Tryon Street
Suite 2600
Charlotte, NC 28202-1935
704.444.2000 tel
704.444.2050 fax

525 W. Monroe Street
Chicago, IL 60661-3693
312.902.5200 tel
312.902.1061 fax

5215 N. O'Connor Boulevard
Suite 200
Irving, TX 75039-3732
972.868.9058 tel
972.868.9068 fax

1-3 Frederick's Place
Old Jewry
London EC2R 8AE
+44.20.7776.7620 tel
+44.20.7776.7621 fax

2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel
310.788.4471 fax

575 Madison Avenue
New York, NY 10022-2585
212.940.8800 tel
212.940.8776 fax

260 Sheridan Avenue
Suite 450
Palo Alto, CA 94306-2047
650.330.3652 tel
650.321.4746 fax

1025 Thomas Jefferson Street, NW
East Lobby, Suite 700
Washington, DC 20007-5201
202.625.3500 tel
202.298.7570 fax

Katten Muchin Rosenman LLP is a Limited Liability Partnership including Professional Corporations. London Affiliate: Katten Muchin Rosenman Cornish LLP.