Introduction of Gregory W. Carman, Chief Judge, United States Court of International Trade

Remarks Presented at
Washington International Trade Association (WITA) Luncheon
Honoring Judge Carman's 20 Years of Distinguished Service

Washington, DC

John Magnus
Dewey Ballantine LLP

June 18, 2003

Chief Judge Gregory Carman, since joining the CIT, has continued what was already an illustrious career in public service. Members of the bar who have appeared before him know him as an insightful, curious, and confident jurist. He is also notable for his willingness, where appropriate, to expand the traditional channels of communication between interested parties and the court -- briefs and oral arguments -- by circulating lists of penetrating questions, organizing conference calls, and the like. He has handled more than his fair share of complex customs classification disputes, and on the trade remedy side, has authored some of the Court's most precedentially significant opinions in areas such as the nature of subsidy benefits, the specificity test, as well as dumping calculation and injury issues. His oversight has been particularly valuable for the way in which it situates detailed issues arising in trade remedy proceedings in the broader context of commercial and corporate law principles, as well as principles of administrative law.

On a personal note, I want to draw attention to the interest Judge Carman has long shown for the individuals who appear before him and those gaining admission to the bar of the CIT. We in the ABA Section of International Law and Practice have developed the tradition of holding a joint CIT-CAFC swearing in ceremony at our annual Spring Meeting which alternates between New York City and Washington, DC. Judge Carman has always responded to our invitations to preside over these ceremonies, taking time in the process to deliver useful practice suggestions to newly-admitted lawyers and then to meet with them after the ceremony concludes to shake their hands and welcome them individually. He seems to relish the human side of his job, and he has been a truly superb public face for the court on which he serves.

In one sense, I suppose I should be cross with Judge Carman because he often, in his public speaking, draws attention to the daunting costs that face the litigants -- whichever side they may be on -- in trade remedy disputes. That's not a point most of us in this room find it convenient to discuss. But the fact is, he's right -- and we all know he is right. These are important issues, in terms of the principles being debated as well as the dollars and cents at issue in individual cases, and it does cost a lot of money sometimes to get them properly briefed and presented for decision. But Judge Carman doesn't just complain or cast stones. He also does his part to address the problem, by actively seeking to focus and narrow the issues litigated before him, and by never losing sight of the human beings and corporate interests whose water the lawyers are carrying.

The approach of this luncheon provided a useful occasion to review Judge Carman's body of published opinions. This task would have been better suited to a period of weeks than of hours. So, what I have for you today is just a small down payment -- a minimal sampling of insights for which we are all indebted to Judge Carman.

- Thus, we know, because Judge Carman assured us that it is so, that the "issue of whether the Ugg boots have furskin uppers does not present any genuine issue of material fact." Ugg Int'l v. U.S. (1993).

- We also know more than perhaps many of us would like to know about the classification of "diaper bags," which the parties in Dolly, Inc. v. U.S. (2002) also

referred to variously as "Disney Babies Diaper Bags," "Winnie-the Pooh Diaper Bags," "Dolly's Own Diaper Bags" and "Dolly's Baby Baggage." Judge Carman's resolution of this classification dispute was undoubtedly fortified by his experience in the 1987 Mattel v. U.S. case, which according to at least one of the litigants was to have turned on whether the famous Barbie doll was able to stand "independent of some other instrumentality." (Judge Carman was skeptical, noting that "It was never established … that independent standing capability affects the usefulness of the doll from a child's play perspective," and that the absence of such capability "certainly does not render the doll incomplete. Indeed, that the Barbie doll cannot stand without being propped up is largely irrelevant.")

- Turning to food, now that we have finished our lunch, one comes immediately to the North American Processing case from 1998 in which the defendant characterized the merchandise at issue as consisting of "boneless beef meat to which fat adheres," whereas the plaintiff insisted that the merchandise was more accurately described as "'a mixture of fat trimmings which incorporate intermingled fat and meat, some of which adhere to each other. " (Judge Carman naturally sided with the defendant.) Judge Carman also handily disposed of the Cosmos International case (1991) in which one Mr. Willis "testified that it would be very difficult to consume the Cosmos products in their frozen state. … He thought the Cosmos products were consumed in their frozen state by clipping off the top tube-like protrusions and squeezing the frozen contents out as it melted or became slushy." And of course, there is the Aladdin case from 1989 in which we learn that "in order for the lunch box and beverage flask combination to be used, the nature of its design requires its disassembly. The lunch box must be opened to retrieve whatever food is stored therein, and the beverage flask must be removed from the lunch box to gain access to the beverage or food stored therein."

- Lastly, I would draw your attention to the 2000 Len-Ron Mfg. v. U.S. case in which it was necessary to compare the English and French terminology under HTS heading 4202, with plaintiffs maintaining that "the term 'vanity cases' was intended by the drafters to be equivalent to the French term 'les mallettes de toilettes,' *i.e.*, little trunks for toilet articles." (The parties in that case, you may be surprised to learn, were prepared to stipulate that "women normally carry a handbag containing various personal items wanted about their person for convenience.")

I will leave it for a more thoughtful observer than I to synthesize these delicious morsels of trade and customs jurisprudence. For now, it is my great pleasure to welcome Judge Carman to the microphone for his own rebuttal arguments, with the thanks and congratulations of all of us assembled here in his honor today.