

# SPC&B Update

August 26, 2016

Otter Products Decision is Upheld on Appeal

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## CAFC Upholds CIT Decision on Classification of Cell Phone Cases

As we reported last year, the government appealed the decision by the Court of International Trade (CIT) holding that certain plastic protective cases for mobile phones, tablets, and similar electronic devices, were not classifiable as other containers similar to the enumerated containers in heading 4202, HTS. Rather, the CIT held that the cases were properly classifiable as articles of plastic in heading 3926, HTS, at a much lower duty rate. The Court based its decision on the conclusion that the only characteristic these cases shared with the other containers in heading 4202 was their protective quality. Because the cases did not organize, store, or carry their contents, and the contents remained fully functional while in the cases, they were not similar to the named cases and containers in that heading.

In its decision in Otter Products LLC v. United States, a panel of three judges at the Court of Appeals for the Federal Circuit (CAFC) upheld the decision by the CIT, stating that while a case need not meet all four characteristics of heading 4202 cases and containers, a case that only meets one characteristic of "almost certainly" would not be considered a similar container.

The decision will not be final for at least 45 days, during which the government has the right to request a hearing by a larger panel of judges at the CAFC. As a result, current entries must continue to be filed under HTS heading 4202, but the protest process, on liquidation, should continue in order to protect the right to refunds. We will continue to monitor the case and will advise of further developments.

For more detailed information on the decision and/or on filing protests, please contact Gail T. Cumins at [gcumins@spcblaw.com](mailto:gcumins@spcblaw.com), Alli Baron at [abaron@spcblaw.com](mailto:abaron@spcblaw.com), Donna Shira at [dshira@spcblaw.com](mailto:dshira@spcblaw.com), or Ken Paley at [kpaley@spcblaw.com](mailto:kpaley@spcblaw.com), or call us at 212-425-0055.

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