

CIT Jurisdiction Project:
Brief Summary of the July-August 2013 Proposal
(revised August 30, 2013)

This memorandum provides a commentary that tracks the “Changes in Existing Law Made by the Proposed Legislation (July-August 2013) (2d draft).”

This version of the proposal was developed response to the request from Ways & Means Committee staff to eliminate provisions in earlier proposals that did not appear to have a consensus in support from the interested constituencies, or were not within Ways & Means jurisdiction. Comments on a first draft that was circulated in early July 2013 resulted in further revisions.

19 USC § 1504

This amendment will increase, from 6 months to 8 months, the time within which antidumping and countervailing duty entries must be liquidated after the statutory suspension of liquidation or court-ordered injunction on liquidation is lifted. The reason for the amendment is that under the amendment to section 1675 discussed below, the statutory suspension of liquidation will remain in effect for an additional two months after the Commerce Department publishes the notice of its decision.

19 USC § 1505

This amendment will provide interest on refunds of excess deposits of duty under the proposed amendment to codify Customs and Border Protection’s (CBP’s) “suspense account” procedure in penalty cases. This amendment is linked to the amendments to sections 1514(a)(8) and 1520(a) discussed below.

19 USC § 1514(a)(8)

This amendment overrules the *Carlingswitch* and *Tikal* decisions. Under those cases, if any importer makes a prior disclosure and tenders unpaid duties to mitigate a penalty under 19 USC § 1592, the importer has no legally enforceable right to obtain a refund of any excess payment deposited with CBP. Under the amendment, after the importer deposits the money with CBP, the importer may make a written request for a refund of any excess at the end of the administrative penalty proceeding. If CBP does not refund the excess, the importer may protest and, if the protest is denied, the importer may bring an action in the CIT. If the importer wins the case, it receives not only the excess money deposited, plus interest, but also the excess amount of the penalty after the calculation of lost revenue is lowered. (As discussed below, the proposal includes a corresponding amendment to 19 § USC 1520(a)(3) authorizing CBP to refund excess deposits made in connection with a penalty.)

19 USC § 1514(b)

This amendment, together with amendments to 19 USC § 1618 and 28 USC § 2637 discussed below, is an additional change in the law to allow importers to initiate judicial review in customs penalty cases. Under the amendment to section 1618, the respondent in a section 1592 penalty case may request accelerated disposition of the proceeding any time concurrently with or after filing a petition for remission or mitigation under section 1618. If CBP does not decide the petition within 60 days after receiving the request for accelerated disposition, the petition is deemed denied, the penalty alleged in the penalty notice is imposed, and the respondent may file a protest challenging the penalty.

19 USC § 1514(c)

These amendments govern formalities, standing, and timing of the new protest rights.

19 USC § 1516a(c)(2)

This amendment eliminates the need for parties to seek a preliminary injunction against liquidation during judicial review of the result of an antidumping or countervailing duty (“AD/CVD”) administrative review. Under new subparagraph (A), liquidation of the entries covered by the administrative review will be suspended by statute.

19 USC § 1516a(e)

This amendment addresses the problem that, if CBP does not liquidate AD/CVD entries in accordance with a court decision within 6 months, the entries are deemed liquidated as entered. Under the amendment, a deemed liquidation in this situation is not in accordance with law and the court may grant appropriate relief to correct the liquidation. The Commerce Department will report to the parties on the rate of duty assessed on liquidation within 8 months after the court’s decision.

19 USC § 1520(a)

This amendment is part of the revisions to overrule the *Carlingswitch* and *Tikal* decisions and codify CBP’s suspense account procedure. Under the amendment, CBP is authorized to refund money deposited as duties, taxes, fees, drawback overpayments in connection with a penalty (that is, money tendered to make a valid prior disclosure under 19 USC § 1592(c) or § 1593a(c)), where it is determined that the money owed is less than the amount deposited. (As this proposal was being developed, I considered writing this amendment into sections 1592 and 1593a, but my current thinking is that the amendment fits better in section 1520 because it was the statutory provision analyzed in *Carlingswitch* and because section 1520(b) authorizes refunds to be paid from general funds of the Treasury.)

19 USC § 1618

The amendment adds a new subsection (b) that allows the respondent in a section 1592 or 1593a penalty case to request accelerated disposition of a petition for remission or mitigation of the penalty. If CBP does not issue a decision on the petition within 60 days after receiving the request for accelerated disposition, the petition is deemed denied and the penalty claim is subject to protest under new subsection 1514(b).

19 USC § 1675

This amendment provides, in substance, that the Commerce Department may not issue liquidation instructions for entries covered by an AD/CVD administrative review until the 60-day time for seeking judicial review of the administrative determination has elapsed. Accordingly, the statutory suspension of liquidation will remain in effect for an additional 60 days after the Commerce Department publishes the notice of its decision.

28 USC § 1581(g)

This amendment provides that the CIT will have jurisdiction to review all final decisions under 19 USC § 1641 to deny a customs broker's license or permit, to revoke a customs broker's license or permit, to suspend a customs broker's license or permit, or to impose a monetary penalty in lieu of a revocation or suspension (instead of the existing law in which some but not all section 1641 decisions are within the CIT's jurisdiction).

28 USC § 1581(i)

Under new clause (4), the CIT's residual jurisdiction will extend to cases arising under any federal statute providing for a prohibition or condition on the importation of merchandise within the jurisdiction of CBP. Under new clause (5), the CIT's residual jurisdiction will extend to cases arising under duty-free or duty-deferral provisions, thereby overruling a case holding that statutes providing duty-free treatment such as GSP are not within the CIT's residual jurisdiction.

28 USC § 1582(a)

This amendment gives the CIT jurisdiction in cases to recover civil penalties under any provision of the Tariff Act of 1930, as amended, as well as any civil penalty within the jurisdiction of CBP arising from a prohibition or condition on the importation of merchandise. However, the CIT will have concurrent jurisdiction to district courts in actions to recover a civil penalty under section 337 of the Tariff Act. The CIT will also have jurisdiction to enforce a customs summons under 19 USC § 1510.

28 USC § 1582(b)

This amendment gives the CIT jurisdiction of any seizure of merchandise that is imported or attempted to be imported, other than narcotics or controlled substances, under any provision of the Tariff Act of 1930 or any provision within the jurisdiction of CBP setting forth a prohibition or condition on the importation of merchandise. In particular, under this amendment, the CIT will have jurisdiction in trademark infringement seizures under 19 USC § 1326.

28 USC § 2631

This amendment clarifies the provisions for standing to bring a civil action in a customs broker's cases under 19 USC § 1641 and the CIT's section 1581(g) jurisdiction.

28 USC § 2636

This amendment governs the time for commencing a civil action in a customhouse broker case under 19 USC § 1641.

28 USC § 2637

This amendment is part of the new procedure allowing a respondent to file a protest and initiate judicial review in a customs penalty case. The amendment provides that, if the respondent wishes to use this procedure and seek judicial review, it must pay all duties, taxes, fees, penalties, and interest assessed by CBP before the lawsuit is commenced in the CIT.