TITLE I: AMENDMENTS TO THE TARIFF ACT OF 1930

Section 101. Limitation on Liquidation

Present Law

Under section 516A(e)(2) of the Act (19 U.S.C. 1516a(e)(2)), if the reviewing court sustains the plaintiff's cause of action contesting a determination in an antidumping or countervailing duty case, entries whose liquidation was enjoined pending judicial review are required to be liquidated in accordance with the court's decision. Under section 504(d) of the Act (19 U.S.C. 1504(d)), when a suspension of liquidation required by statute or court order is removed, U.S. Customs is required to liquidate the entry within 6 months after receiving notice of the removal. Any such entry (other than an entry whose liquidation has been lawfully extended) that is not liquidated within 6 months is treated as having been deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer at the time of entry.

Explanation of provision

Section 516A(e)(2) of the Act is amended to apply to entries whose liquidation was suspended under new section 516A(c)(2)(A), in addition to entries whose liquidation was enjoined. A new section 516A(c)(4) is added. It states the provision for deemed liquidation within 6 months under section 504(d) does not apply to entries subject to an appeal under section 516A(a). Section 504 is amended to include a cross-reference indicating that new section 516A(c)(4) represents an exception to the potential deemed liquidation under section 504(d).

Reasons for change

In current law, despite the statutory requirement that entries whose liquidation was

enjoined by the court during judicial review are to be liquidated in accordance with the final decision by the court, section 504(d) might cause the entries to be deemed liquidated as entered. Specifically, if U.S. Customs does not liquidate the entries in accordance with the court's decision within 6 months after receiving notice of the court decision, the deemed liquidation provision is triggered. This situation as occurred in *Cemex S.A. v. United States*, 279 F. Supp. 2d 1357 (Ct. Int'l Trade 2003). Deemed liquidation in this situation undermines the authority of the court and makes judicial review an exercise in futility. Therefore, it is appropriate to create an exception to deemed liquidation to assure the integrity and enforcement of court decisions. Under the amended law, the court will be able to include language in its orders governing the time for liquidation of the entries covered by the court decision. This will allow the court to control the enforcement of its orders and protect the interests of importers that would be adversely affected by excessive delay in liquidation after a court decision.

Section 102. Protests against CBP Decisions

Present law

Section 514(a) of the Tariff Act (19 U.S.C. § 1514(a)) enumerates the categories of CBP decisions that may be contested by the filing of a protest. Under present law, protests may be filed against CBP decisions, including the legality of all orders and findings entering into the same, as to the following matters: (1) the appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except for a determination appealable under section 337 of the Tariff Act (19

U.S.C. § 1337); (5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof; (6) the refusal to pay a claim for drawback; or (7) the refusal to reliquidate an entry under section 520(c) of the Tariff Act (19 U.S.C. § 1520(c)). Subject to certain exceptions set out in section 514(a), all decisions specified in section 514(a) become final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with the statute, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade. As amended in 2004, the statute prescribes a 180-day limitations period for the filing of a protest for entries made after the effective date of the 2004 amendment.

Explanation of provisions

The proposed legislation adds two categories of CBP decisions that are subject to protest:

- the assessment or collection of duties, taxes, or fees, whether or not voluntarily tendered, under section 592(c) or (d) or section 593A(c) or (d) of the Tariff Act (19 U.S.C. § 1592(c) or (d) or 1593a(c) or (d)); and
- demands by CBP for payment or repayment of duties, taxes and fees otherwise than in accordance with sections 500 and 501 of the Tariff Act (19 U.S.C. §§ 1500 & 1501), including but not limited to denials of requests for offsets pursuant to section 509 (b)(6)(A) of the Tariff Act (19 U.S.C. § 1509(b)(6)(A)).

For the second new category of decision, the proposed legislation provides that, even if a protest is not filed against a CBP demand, the existence and amount of liability for duties, taxes, or fees requested to be paid or repaid shall not be final and conclusive on any party for purposes of a

civil action commenced by the United States in the Court of International Trade in accordance with 28 U.S.C. § 1582.

Reasons for change

The purpose of these amendments is to modernize the protest remedy so that it corresponds to the assessment and collection procedures CBP has used increasingly since the 1980s. Under these procedures, CBP often assesses, demands, and collects increased customs duties based on post-importation audits, in much the same way that the Internal Revenue Service uses audits of tax returns. Unlike the income tax laws, however, the customs laws do not include adequate procedures for administrative remedies and judicial review so that importer-taxpayers may contest deficiency assessments based on audits.

In its existing form, the protest remedy reflects the duty assessment process of an earlier era. Traditionally, if the CBP's predecessor, the Customs Service, decided to assess and collect any increased customs duties, it nearly always did so during the initial duty-assessment process, beginning with entry of imported merchandise and ending with "liquidation," the final calculation or ascertainment of the amount of duties accruing on an entry. Under this procedure, "liquidation" normally is completed within one year after the date of entry, subject to certain exceptions. After liquidation, under section 501 of the Tariff Act (19 U.S.C. § 1501), the present law allows a period of 90 days in which CBP may reliquidate an entry on its own initiative for any reason. The law allows a period of 180 days after the notice of liquidation in which importers may file administrative protests under section 514 of the Tariff Act against the liquidation, including decisions on valuation, classification, and rate and amount of duties reflected in the liquidation. After the 180-day period, if no protest is filed, section 514 provides

that the liquidation and all underlying decisions that are merged into the liquidation become "final and conclusive upon all persons (including the United States and any officer thereof) ...." Tariff Act of 1930, § 514(a), 19 U.S.C. § 1514(a). *See also Brother International Corp. v. United States*, 246 F. Supp.2d 1318, 326 (Ct. Int'l Trade 2003) (contrasting the traditional "liquidation and protest method" in which "goods were evaluated by a Customs officer prior to release into the stream of commerce," with the procedure used increasingly in the last twenty years in which "Customs now relies heavily on post-import audits to reconcile mistakes made in the liquidation process" and "these audits occur months after liquidation has become final and after the time to protest has elapsed.").

Under current law, an importer faces a procedural predicament if a CBP post-liquidation audit (or the importer's own internal review) reveals that the importer paid or may have paid insufficient duties when the entry was liquidated. Because the liquidation is final in these cases, the traditional remedy of filing a protest against the liquidation does not apply. Instead, the first option for the importer might be to pay the deficiency and file a protest seeking a refund. But in this case there is considerable uncertainty in the law whether the court will allow the merits of the importer's claim to be heard. If the court decides after the fact that the importer's payment was made voluntarily, the court dismisses the case without adjudicating the merits of the importer's claim for a refund. The second option for the importer is to refuse to pay the amount determined after audit and then wait for the government to commence an action in the Court of International Trade for recovery the duties. But in this case, under the applicable statute, the importer is always exposed to liability for large monetary penalties as well as the duties. What often happens in practice is that the importer simply pays the amount demanded by the

government even if the importer disagrees with it. Therefore, the proposed legislation adapts the protest remedy to current administrative procedures, allowing protest to be the remedy in the customs laws for challenging post-liquidation deficiency assessments and collections of duties, taxes, or fees.

(1) Protest against assessment or collection of duties under sections 592(c) or (d) or 593A(c) or (d): In new paragraph (8) of section 514(a) of the Tariff Act, the proposed legislation affords a right of protest against the assessment or collection of duties, whether or not voluntarily tendered, under sections 592(c) or (d) or 593A(c) or (d) of the Tariff Act (19 U.S.C. §§ 1592(d) and 1593a(d)).

Section 592 provides civil penalties for violations of the customs laws in import transactions resulting from negligence, gross negligence, or fraud, while section 593A provides civil penalties for similar violations of the drawback laws. Section 592(d), and section 593A(d) in drawback cases, authorize CBP to require the restoration of "lawful duties, taxes or fees" where CBP determines that an importer or other person has failed to pay these amounts as a result of a violation of section 592 or 593A. CBP is empowered to demand restoration of "lawful duties" regardless of whether a civil penalty is imposed, and even though entries have been liquidated and the period for CBP reliquidation (or importer protest) has elapsed. Since civil penalties represent a multiple of the duties demanded, CBP's power to couple a demand for unpaid duties with the potential of civil penalties represents a potent tool for securing the payment or repayment of unpaid duties, taxes, or fees. Since, as discussed above, CBP often identifies unpaid duties, taxes, or fees through a post-import customs audit, in practice, sections

592(d) and 593A(d) represent the legal authority used under current procedures to demand, assess, and collect additional or supplemental duties based on customs audits.

Subsection (c)(4) of section 592, and subsection (c)(4) of section 593A in drawback cases, creates a so-called "prior disclosure" procedure that allows an importer or other party owing customs duties to reduce or eliminate its exposure to civil penalties by voluntarily disclosing a violation of the customs laws prior to receiving notice that a formal investigation of the violation has started. In making the "prior disclosure" of the violation, the party making the disclosure must tender to CBP the amount of revenue that CBP calculates to have been lost as a result of the violation. Where a violation results from negligence or gross negligence rather than fraud, the maximum penalty when the violator makes a prior disclosure is the accrued interest on the unpaid duties, taxes, or fees. This ability to reduce or eliminate exposure to penalties gives importers a strong incentive to make a prior disclosure accompanied by a voluntary tender of lost revenue.

The present law does not, however, establish adequate opportunities and procedures for aggrieved parties to initiate judicial review to adjudicate disputes over the amount of duties, taxes, or fees paid in connection with a prior disclosure under section 592(c) or 593A(c) or collected under section 592(d) or 593A(d). In the present law, the only method of obtaining judicial review expressly provided under section 592 and 593A is for the importer (or other party receiving a demand for payment) to refuse to pay the monies demanded and wait for the government to sue. Since the government's lawsuit for any underpaid duties can be expected to be coupled with a claim for civil penalties, importers are often unwilling to undertake the litigation risk of allowing the government to sue. This is particularly true because, under the

statutory burden of proof, the government only needs to show that an importer underpaid the lawful amount of duty to create a rebuttable resumption that the importer was negligent. *See* Tariff Act of 1930, §§ 592(e)(4) & 593A(i)(3), 19 U.S.C. §§ 1592(e)(4) & 1593a(i)(3).

Furthermore, under the present law, the courts have ruled that a party making a voluntary tender under the section 592(c)(4) or 593A(c)(4) prior disclosure procedure does not have the right to file a protest seeking an adjudication of whether it lawfully owes the amount it has tendered or the refund of any excess amount. *E.g., Carlingswitch, Inc. v. United States*, 85 Cust. Ct. 63, C.D. 4873, 500 F. Supp. 223 (1980), *aff'd*, 68 CCPA 49, C.A.D. 1264, 651 F.2d 768 (1981); *see also Carlingswitch, Inc. v. United States*, 5 CIT 70, 560 F. Supp. 46 (holding that the Court of International Trade lacks jurisdiction under its grant of "residual jurisdiction" because no cause of action exists to adjudicate whether the importer lawfully owed the amount it has voluntarily tendered), *aff'd per curiam*, 720 F.2d 656 (Fed. Cir. 1983).

The inability to protest a voluntary payment can be unfair because, in some cases, there may be a good faith dispute over the amount of duties owed or the existence of liability. Under current law, the importer may be forced to choose between losing the ability to reduce or eliminate potential civil penalties or losing the ability to recover an overpayment of duties. One decision in the Court of International Trade, however, ruled that an ostensibly voluntary tender of duties in connection with a prior disclosure was a protestable "exaction" because "the circumstances of the payment indicated a lack of voluntariness, either due to Customs making the request 'under color of official authority' or an imposition of liability [for a civil penalty] ..." *Brother International Inc. v. United States*, *supra*, 246 F. Supp.2d at 1323. Even though the *Brother International* decision allowed a protest, the court acknowledged that the ability to

protest under current law depends on "the specific circumstances of each case" and, as a result, "the issue of jurisdiction over cases such as the one at hand ... is in considerable turmoil." *Id.* at 1321 (*citing Bridalane Fashions, Inc. v. United States*, 32 F. Supp.2d 466, 470 (Ct. Int'l Trade 1998)).

Given the uncertainty of making a case-by-case evaluation of the specific circumstances, and the absence of an express importer-initiated statutory remedy in the present law, it remains unsettled whether an importer or other party that might wish to contest the amount of duties being tendered under section 592(c) or 593A(c), or being demanded under section 592(d) or 593A(d), has effective access to judicial review. Therefore, the proposed legislation is intended to provide that an aggrieved party's ability to protest should not depend on whether the payment is determined after the fact to have been voluntary or involuntary. Thus, the legislation would overrule *Carlingswitch* and similar decisions by allowing a protest to be filed to contest the collection of duties, whether or not the payment was tendered voluntarily.

(2) Protest against post-liquidation requests for payment or repayment, including denials of offsets. In new paragraph (9) of section 514(a) of the Tariff Act, the proposed legislation affords a right of protest against "demands for payment or repayment of duties, taxes, or fees, otherwise than in accordance with sections 500 and 501 of [the Tariff] Act, including offsets." The purpose of this new paragraph is to create a procedure in customs administration generally analogous to the procedure used in federal income tax law for contesting deficiency assessments without paying the amount demanded by the government.

Under CBP's current audit-based procedures, if a CBP audit makes a finding of lost revenue on entries whose liquidation has become final, and if CBP then approves and adopts the

audit finding, CBP will issue a demand to the importer for payment or repayment of the unpaid duties. But under the current law the importer does not have any administrative procedure for challenging the demand for payment itself — only the options discussed above of paying the demanded amount and hoping that the court will later rule that the payment was not voluntary or of waiting for the government to sue to recover the duties plus monetary penalties.

This legislation corrects this problem by mirroring the system currently used in income tax disputes. In federal income tax procedure, the Internal Revenue Service relies on audits to check taxpayers' returns and determine whether, in the Service's view, any additional taxes are owed. If the audit finds a deficiency and the matter is not otherwise resolved, the Service sends the taxpayer a statutory notice of deficiency which advises the taxpayer that, unless the taxpayer files a petition in the Tax Court within 90 days, the deficiency will be assessed and collected. After the taxpayer receives the notice of deficiency, it has two options: (1) it may file a petition in the Tax Court contesting the deficiency assessment, or (2) it may pay the tax and file a claim for a refund, and if the claim is denied, may file a lawsuit for a refund in federal district court or the Court of Federal Claims. One of the considerations affecting the taxpayer's choice between these two procedures is that interest continues to run on the unpaid deficiency if the taxpayer litigates in the Tax Court.

Missing from present customs law is a procedure analogous to the taxpayer's petition in the Tax Court contesting a deficiency assessment. In view of CBP's widespread use of audit procedures, it is appropriate to introduce such a procedure into customs law. While not adopting the choice of fora evident in the income tax procedures, the importer will have the choice of two procedures. One option will be to file a protest against a CBP decision to demand payment or repayment of additional or supplemental duties, taxes, or fees, followed, if necessary, by commencing a civil action in the Court of International Trade to contest the denial of the protest. The other option will be the existing procedure of filing a protest after liquidation or reliquidation and, if the protest is denied, paying all liquidated duties and commencing a civil action in the Court of International Trade for a refund.

By analogy to the income tax procedure, if an importer elects under the new legislation to file a civil action contesting the denial of a protest against a CBP demand for payment or repayment, the importer will not be required to pay the duties prior to the commencement of the action, but interest on the duty liability will continue to accrue. In the civil action commenced by the importer under this new paragraph, the government could counterclaim for the payment of duties pursuant to 28 U.S.C. § 1583. An importer electing to use the existing procedure of filing a protest against liquidation will continue to be required to pay all liquidated duties prior to commencement of the civil action for a refund.

The new right of protest specifically includes requests or demands for duties resulting from the denial of an offset under section 509(b)(6)(A) of the Tariff Act (19 U.S.C. § 1509(b)(6)(A)). Section 509(b)(6)(A), which was added to the law by the Trade Act of 2002 (Pub. L. No. 107-210), provides that in calculating the loss of revenue or monetary penalties

under section 592, CBP will offset any overpayments or over-declarations found during a customs audit against underpayments or under-declarations also found during the audit. The new right of protest does not, however, apply to the administrative process leading to liquidation of an entry (section 500 of the Tariff Act (19 U.S.C. § 1500)), or to CBP's 90-day period for reliquidation under section 501 (19 U.S.C. § 1501)). Thus, the legislation does not change present law that bars protests against non-final actions in the course of the entry and liquidation process, such as a demand for deposit of estimated duties at the time of importation. In addition, the intention of this legislation is that the protest could only be filed after a finding of lost revenue based on an audit is adopted and approved by CBP through the issuance of a demand for payment. Merely making a finding of lost revenue in a CBP audit would not constitute a final agency action triggering the right of protest.

The clause providing that, even if a protest is not filed against a CBP demand, the existence and amount of liability for duties, taxes, or fees is not final and conclusive on any party for purposes of a civil action in the Court of International Trade under 28 U.S.C. § 1582 is intended to parallel the procedures in income tax litigation. The purpose of the clause is to make it clear that the existence and amount liability for duties, taxes, and fees claimed by CBP in its demand is not final and conclusive on any party (including the United States), and instead are issues for the Court to determine, if the importer or other party receiving a demand chooses to contest the CBP demand by allowing the United States to commence a lawsuit to recover the unpaid duties, taxes, or fees. Nevertheless, if the importer-taxpayer does not file a protest within the prescribed limitations period, the CBP's demand for payment or repaid would be final and conclusive to the extent that a protest against the demand would no longer be allowed.

This new paragraph is intended to cover all final post-liquidation CBP decisions to demand payment or repayment of additional or supplemental duties, taxes, or fees, including the underlying CBP finding that an importer or other parties owe the amount demanded. In present law, the only authority for such post-liquidation demands for additional customs duties, taxes, or fees is found in sections 592(d) and 593a(d) of the Tariff Act (19 U.S.C. §§ 1592(d) & 1593A(d)). As discussed above, these statutes are applicable in customs penalty proceedings, authorizing CBP to require the restoration of any duties, taxes, or fees of which the United States was deprived as a result of a violation of the law. The proposed legislation is not intended to create new legal authority for a demand for payment or repayment of duties, taxes, or fees, outside the procedures of a penalty case under section 592 or 593a, where the liquidation of an entry has become final under section 514 of the Tariff Act (19 U.S.C. § 1514), but would be applicable if Congress creates such a procedure in the future. If the importer commences an action under this new paragraph, then the government could counter-claim for the payment of duties in the course of the same action pursuant to 28 U.S.C. § 1583.

S*ection 103. Filing of Protests.*

Present law

Under section 514(c)(2) of the Tariff Act, and subject to two exceptions (sections 485(d) and 557(b) of the Tariff Act), protests may be filed with respect to merchandise which is the subject of a decision specified in section 514(a) by the following parties: (1) the importers or consignees shown on the entry papers, or their sureties; (2) any person paying any charge or exaction; (3) any person seeking entry or delivery; (4) any person filing a claim for drawback; (5) with respect to a determination of origin for NAFTA purposes, any exporter or producer of

the merchandise subject to the determination, if the exporter or producer completed and signed a NAFTA certificate of origin covering the merchandise; or (6) any authorized agent of the foregoing parties.

Under section 514(c)(3) of the Tariff Act, a protest is required to be filed within 180 days after but not before (a) the date of liquidation or reliquidation or (b) in circumstances in which clause (a) is not applicable, the date of the decision as to which protest is made.

Explanation of provision

The legislation provides that a protest against the assessment or collection of duties, taxes, or fees, or against requests for payment or repayment of duties, taxes, and fees, including the denial of an offset, may be filed by (i) any person against whom duties, taxes, or fees are assessed, or from whom duties, taxes, or fees are collected; (ii) any person to whom CBP makes a request for payment or repayment of duties, taxes, and fees; (iii) any person who tenders duties, taxes, or fees to CBP, whether or not voluntarily; or (iv) any person whose request for an offset is denied, in whole or in part.

The legislating provides that, for purposes of triggering the 180 period for filing a protest, the date of a decision as to the collection or assessment of duties, taxes, or fees under section 592(c) or 593A(c) of the Tariff Act (19 U.S.C. 1592(c) or 1593a(c)) is each of (i) the date on which CBP receives a tender of duties, taxes, or fees, (ii) the date on which CBP notifies a person making a prior disclosure of the amount of duties, taxes, or fees required to be tendered, and (iii) the date on which CBP informs the person making any such tender that the tender has been accepted and the matter is considered closed..

Reasons for change

The purpose of the amendment is to specify the persons who shall be entitled to file protests against the new categories of protestable decisions added by section 101 of the legislation. Since the present law does not allow protests against these decisions, the list of persons entitled to file protests does not fully correspond to the categories of persons who are likely to be aggrieved or adversely affected by these decisions. The intention of the legislation is to include all parties that might be the subject of the assessment or collection of customs duties, taxes, or fees, or a demand for payment.

In addition, the legislation adds a sentence to clarify the date on which the 180-day protest period begins for a decision as to assessment or collection of duties in a prior disclosure.

Section 104. Judicial Review in Countervailing and Antidumping Proceedings

Present Law

Under section 516A of the Tariff Act (19 U.S.C. 1516a), after a party commences an action for judicial review of an agency determination in antidumping and countervailing duty cases, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by the determination being reviewed, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

Explanation of Provision

The legislation adds new section 516A(c)(2)(A). Under the new provision, if a party requests judicial review of a determination in an administrative review under section 751 of the Tariff Act (19 U.S.C. 1675) or a determination in a scope review, liquidation of entries covered

by the action is suspended pending the final disposition of the court, including all appeals, and the Commerce Department shall not issue liquidation instructions to U.S. Customs during that period. The court may order the Commerce Department to lift the suspension of liquidation before the final decision of the court, upon request by an interested party for such review and a showing that the relief should be granted under the circumstances.

Reason of Change

In its decision in *Zenith Radio Corp. v. United States*, 710 F.2d 806 (Fed. Cir. 1983), the Federal Circuit held that it was appropriate to enjoin liquidation during judicial review of a determination in an administrative review under section 751 of the Tariff Act (19 U.S.C. 1675). The court ruled that the injunction against liquidation was necessary because the law has no mechanism for reliquidating entries and, therefore, judicial review would become moot if the entries were liquidated before judicial review is completed. Since *Zenith*, it has become the practice in cases reviewing the determinations in administrative reviews and scope reviews that injunctions against liquidation during the pendency of judicial review (including appeals) are nearly or always granted on consent after the plaintiff so requests. Thus, the issuance of injunctions in these cases has become a formality.

As amended, the law will provide that liquidation of the entries covered by the administrative review or scope review determination being challenged will be suspended during the pendency of judicial review, including all appeals. The purpose of the amendment is to simplify the litigation and reduce cost by no longer obliging litigants to prepare the injunction paperwork, consult with other parties, and make an application to the court to obtain an

injunction that is always or nearly always granted on consent.

The amendment corresponds to existing law in binational panel reviews under the North American Free-Trade Agreement (NAFTA). In NAFTA panel reviews, the statute currently provides that liquidation of the entries covered by the review is suspended pending panel review of determinations in administrative reviews and scope reviews.

The amendment includes a provision allowing the court to order the Commerce Department to lift the suspension of liquidation before the final decision by the court, upon request by an interested party and a showing that the requested relief should be granted under the circumstances. This provision gives the court flexibility to order the suspension of liquidation to be lifted if a party shows that the suspension does not serve a valid or useful purpose.

In cases in which liquidation is not suspended under the new provision discussed above, the current law will remain in force, allowing the court to enjoin liquidation of some or all entries of merchandise covered by the determination being reviewed, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

Section 105. Customs Brokers

Present Law

The current law states that a customs broker should file a petition with the United States Court of International Trade and explains the procedures for moving this petition through the appeals process.

Explanation of Provision

The legislation replaces references to the petition with references to the summons and complaint and resolves an ambiguity in the statute regarding service of process.

Reasons for Change

The provision updates the law to reflect the modern usage of a summons and complaint in the Court of International Trade.

Also, internal inconsistencies exist within the provisions of the Customs Courts Act of 1980 with respect to the method of commencing customhouse broker license actions, the kind of action described in 28 U.S.C. § 1581(g). These actions are included among those actions which, pursuant to 28 U.S.C. § 2632(a), are to be commenced by filing concurrently a summons and complaint with the clerk of the court. The inconsistency pertaining to customhouse broker license actions appears in 19 U.S.C. § 1641(e), which provides that an action is commenced by filing "a written petition" in the court and further provides that a copy of the petition is to be "transmitted by the Clerk of the Court to the Secretary [of the Treasury] or his designee." In one unreported case, *James A. Barnhart v. United States*, Court No. 81-3-00328, the court directed plaintiff to comply with the requirements of 28 U.S.C. § 2632(a) by filling a summons and complaint notwithstanding the fact that plaintiff had complied with the requirements of 19 U.S.C. § 1641(e) by filing a petition. This legislation resolves the ambiguity created by these inconsistencies by following the provisions in Title 28.

Section 106. Liquidation in Antidumping and Countervailing Duty Cases

Present Law

After an antidumping or countervailing duty order is issued, the liquidation of entries that

are subject to the order remains suspended until such time as the Commerce Department issues liquidation instructions to U.S. Customs. When the Commerce Department conducts an administrative review under section 751(a) of the Tariff Act (19 U.S.C. 1675(a)), the law requires any necessary liquidation of entries to be made promptly after the administrative review is completed and, to the greatest extent practicable, within 90 days after the liquidation instructions are issued. To fulfill this requirement, the Commerce Department usually issues liquidation instructions less than 30 days after it issues its administrative review determination.

Explanation of Provision

The legislation amends section to provide that the suspension of liquidation during an administrative review will remain in effect until the time for appeal of the review determination to the U.S. Court of International Trade under section 516A of the Tariff Act (19 U.S.C. 1516a) has elapsed. Liquidation shall be made promptly afterward and, to the greatest extent possible, within 90 days, unless the suspension of liquidation remains in effect during judicial review (as provided under new section 516A(c)(2)(A) discussed below). As amended, the law provides that the Commerce Department must not issue liquidation instructions until the time for appeal has elapsed.

Reason for Change

The current law causes problems for parties that seek judicial review of the Commerce Department's determinations in administrative reviews in antidumping and countervailing duty cases. Section 516A gives parties a period of 30 days within which to file a summons in the Court of International Trade to commence an action contesting the review determination. But,

under its usual practice intended achieve prompt liquidation, the Commerce Department may have issued liquidation instructions before the 30-day period for appeal has elapsed.

It is established law that if entries are liquidated before judicial review is completed, judicial review becomes moot because the law has no mechanism for reliquidating entries in antidumping and countervailing duty cases. Therefore, a party seeking judicial review must request the reviewing court to enjoin liquidation while judicial review is pending. The Commerce Department's practice of issuing liquidation instructions less than 30 days after the administrative review determination creates the risk that entries might be liquidated before an action for judicial review is filed or before a court-ordered injunction is issued. To protect themselves against this risk, parties are obliged to commence judicial review as fast as possible and move for an injunction against liquidation before Commerce acts. The result is a race to the courthouse that undermines the 30-day period allowed for commencing judicial review and puts unnecessary burdens on the litigants and the court.

The proposed amendment rectifies the problem by providing that the suspension of liquidation shall remain in effect after an administrative review determination until the 30-day period for appeal to the Court of International Trade has elapsed. "Appeal" in this context refers to the commencement of an action under section 516A of the Tariff Act (19 U.S.C. 1516a) challenging the administrative review determination. After the 30-day period for appeal elapses, any required liquidation of entries shall be made promptly and, to the greatest extent possible, within 90 days, except that the entries would not be liquidated if liquidation remains suspended during judicial review. As amended, the law provides expressly that the Commerce Department must not issue liquidation instructions until the time for appeal has elapsed.

TITLE II: AMENDMENTS TO TITLE 28 UNITED STATES CODE

Section 201. Jurisdiction of the United States Court of International Trade in Lawsuits Against the United States.

Subsection (1): Customs Broker License Suspensions and/or Revocations.

Present Law

Section 1581(g) of title 28, United States Code, governs the jurisdiction of the United States Court of International Trade in civil actions challenging some grounds for the denial, suspension, or revocation of a customs broker's license or a customs broker's permit or a decision to impose monetary penalties in lieu thereof.

Explanation of Provision

The legislation expands the jurisdiction of the United States Court of International Trade to cover all possible bases for the denial, suspension, or revocation of a customs broker's license or a customs broker's permit or a decision to impose monetary penalties in lieu thereof.

Reasons for Change

The present law permits challenge in the United States Court of International Trade for the denial, suspension or revocation of a customs broker's license or a customs broker's permit (or a decision to impose monetary penalties) only in certain circumstances. The statute presently allows for appeal to the Court of International Trade for a decision on the suspension, revocation or denial of a customs broker's license or permit when the action is pursuant to 19 U.S.C. §§ 1641(b)(2), (b)(3), (b)(5), (c)(1), (c)(2), (d)(2)(A), or (d)(2)(B). Absent from the jurisdictional provision are appeals based on action taken pursuant to 19 U.S.C. §§ 1641(c)(3) or (g)(2). In *Sergio U. Retamal v. United States Customs and Border Protection*, Slip Op. 05-1332 (March 6,

2006), the Federal Circuit held that "the revocation of a license under 19 U.S.C. § 1641(g)(2) is not referenced anywhere in 28 U.S.C. §§ 1581(a)-(h) or 28 U.S.C. §§ 1581(i)(1)-(3) and, therefore, jurisdiction cannot lie under section 1581(i)(4)." *Id.* at 5. This amendment to the legislation would make clear that a denial, suspension, or revocation of a Customs license or permit is appealable to the Court of International Trade regardless of the basis on which the action is based.

Subsection (2): Residual Jurisdiction of the Court of International Trade

Present Law

Subsection (i) of section 1581 provides that, in addition to the jurisdiction conferred upon it by other subsections of section 1581, and subject to the exception in subsection 1581(j) (barring jurisdiction in civil actions arising under section 305 of the Tariff Act of 1930), the United States Court of International Trade has exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for (1) revenue from imports or tonnage; (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue; (3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or (4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of subsection (i) and other subsections of section 1581. Subsection 1581(i) does not confer jurisdiction over an antidumping or countervailing duty determination reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

*Explanation of provision*s

The legislation revises the Court's grant of residual jurisdiction to cover cases arising out of any law of the United States providing for (1) revenue from tonnage, (2) tariffs, duties, taxes, or fees on the importation of merchandise; (3) embargoes or other quantitative restrictions on the importation of merchandise; (4) any prohibition or condition on the importation of merchandise; (5) importation without otherwise applicable duties, tariffs, or fees on the importation of merchandise, or deferral of such duties, taxes, or fees; or (6) administration and enforcement with respect to the matters referred to in paragraphs (1) to (5) of subsection (i), subsections (a) through (h) of section 1581, or section 1582.

The legislation excludes civil actions arising under section 337 of the Tariff Act (19 U.S.C. § 1337), along with the existing exclusion of civil actions arising under section 305 of the Tariff Act, from the jurisdiction of the Court of International Trade.

Reasons for Changes

(1) Tariffs, Duties, Taxes, or Fees on the Importation of Merchandise. The legislation revises existing clause (2) of section 1581(i) to clarify that the residual jurisdiction of the Court of International Trade covers all federal laws providing for tariffs, duties, taxes, or fees on the importation of merchandise, regardless of whether they are for the purpose of raising revenue. The purpose of this revision is to correct a misleading statement in the decision of the Supreme Court in *K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176 (1988). In *K Mart*, the Supreme Court stated that "Congress granted the Court of International Trade exclusive jurisdiction over suits relating to 'tariffs, duties, fees, or other taxes on the importation of merchandise,' but not if they

are for the 'raising of revenue.'" 485 U.S. at 188. As explained in one commentary on the *K Mart* decision:

> This statement is based on clause (2) of section 1581(i), which gives the CIT jurisdiction in suites relating to import duties, fees and taxes "for reason other than the raising of revenue." The Supreme Court's rephrasing seems to say that the CIT lacks jurisdiction in suits relating to duties or taxes on the importation of goods for the purpose of raising revenue. But this misinterpretation ignores clause (1) of section 1581(i), which gives the CIT jurisdiction in lawsuits under any federal laws providing for "revenue from imports."

PATRICK C. REED, THE ROLE OF FEDERAL COURTS IN U.S. CUSTOMS & INTERNATIONAL TRADE LAW 191 (1997). In addition, the provision is clarified by changing "… fees, or other taxes …" to read "… taxes, or fees … ." The existing reference to "other taxes" following "fees" implies that fees are a kind of tax, but strictly speaking fees are not taxes.

(2) Embargoes and Other Quantitative Restrictions for Purposes of the Protection of Public Health and Safety. In 1980, when Congress drafted the Court's jurisdictional grant under clause (3) of subsection 1581(i) over cases involving embargoes and other quantitative restrictions on imports, it decided not to include embargoes and other quantitative restrictions for purposes of the protection of public health and safety. The reason for excluding these embargoes and quantitative restrictions was that, according to a witness, allowing the Court of International Trade to hear all embargo and quantitative restriction cases could "permit the court to assert jurisdiction over civil actions involving the application of the Federal Food, Drug, and Cosmetics Act or the Toxic Substances Control Act to imported merchandise." H.R. Rep. No. 96-1235, *supra*, at 47. The witness asserted that "those questions should be treated the same whether a court is dealing with domestic or imported merchandise and more appropriately should come within the jurisdiction of the district courts." *Id.* at 48. Based on this testimony, the

subsection was amended to include the limitation "for purposes other than the protection of the public health and safety."

With hindsight, however, it is apparent that the removal of embargoes and other quantitative restrictions for purposes of the protection of public health and safety from clause (3) of subsection 1581(i) was based on a mistaken premise. Contrary to the witness's assertion in 1980, the Court's other jurisdictional grants allow it to hear civil actions involving the application of federal laws governing public health and safety to imported merchandise. The Court can and does hear such cases where the jurisdiction is founded on the denial of an importer's protest against the exclusion of imported goods (section 1581(a) jurisdiction) or a government lawsuit to recover on a customs entry bond after an importer's failure to redeliver goods into customs custody (section 1582 jurisdiction). *See, e.g., United States v. Utex International, Inc.*, 857 F.2d 1408 (Fed. Cir. 1988) (holding that the exclusion of food based on a violation of the Federal Food, Drug, and Cosmetics Act is an exclusion under the customs laws that may be protested or may result in customs bond liability).

In short, it is an unwarranted jurisdictional anomaly that the Court cannot hear lawsuits involving embargoes or other quantitative restrictions for purposes of public health or safety under its section 1581(i)(3) jurisdiction, when the Court can hear lawsuits involving exclusions and other import violation for reasons of public health or safety under other jurisdictional grants. With respect to the concern that the applicable legal issues should be treated the same whether a court is dealing with imported or domestic merchandise, the Court of International Trade should refer to case law in other federal courts to try to prevent or minimize inconsistencies with judicial decisions involving domestic merchandise.

(3) Any Prohibition or Condition on the Importation of Merchandise. The legislation adds new clause (4) to subsection (i), covering federal laws providing for any prohibition or condition on the importation of merchandise. The purpose of this amendment is to overrule a portion of the Supreme Court's reasoning in *K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176 (1988). In *K Mart*, the Supreme Court gave a narrow interpretation to the term "embargo or other quantitative restrictions" in section 1581(i). The Court stated that "[b]y choosing the word 'embargoes' over the phrase 'importation prohibitions,' Congress … declined to grant the Court of International Trade exclusive jurisdiction over importation prohibitions that are not embargoes." 485 U.S. at 189. In addition, the Court said that "Congress made no provision for direct review in the Court of International Trade of facial conditions of entry …." *Id.* at 188. The Supreme Court's interpretation undermines Congress's goal of giving the Court of International Trade exclusive jurisdiction to conduct judicial review under the U.S. customs and international trade laws. The amendment makes it clear that Congress intends the exclusive jurisdiction Court of International Trade to extend to federal laws that impose prohibitions or conditions on the importation of merchandise, as well as embargoes and quantitative restrictions (and other matters set out in section 1581).

(4) Importation Without Otherwise Applicable Duties, Taxes, or Fees on the Importation of Merchandise, or Deferral of Such Duties, Taxes, or Fees. New clause (5) of section 1581(i) clarifies that the residual jurisdiction of the Court of International Trade includes cases arising under federal laws providing for duty-free, duty-deferral, and related statutes. New clause (5) is intended to include statutes and programs providing for duty-free importation, such as the

Generalized System of Preferences or free-trade agreements, as well as statutes providing for deferral or potential exemption of import duties such as customs bonded warehouses.

The purpose of this amendment is to overrule another portion of the Supreme Court's reasoning in *K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176 (1988), as well as cases that are progeny of *K Mart*. In *K Mart*, the Supreme Court stated that "Congress did not commit to the Court of International Trade *every* suit against the Government challenging customs-related law and regulations." *Id.* at 188. While it is true that some import-related laws are specifically excluded from the jurisdiction of the Court of International Trade, some federal district courts have improperly relied on the Supreme Court's statement to assert jurisdiction in certain cases arising under parts of the federal customs and international trade laws that provide for duty-free importation or for temporary deferral of duties on imported merchandise. For example, in *International Labor Rights Education and Research Fund v. Bush*, 752 F. Supp. 490 (D.D.C. 1990), a federal district court assumed jurisdiction in a case arising under the provisions of the Trade Act of 1974 governing duty-free importation under the Generalized System of Preferences. Because the Generalized System of Preferences is an integral part of the U.S. statutes that impose import duties, the case should have been within the exclusive jurisdiction of the Court of International Trade. Similarly, in another case, there was uncertainty over whether the Court of International Trade had jurisdiction in a case involving a duty-free store, which is a category of customs bonded warehouse under the U.S. tariff laws. *Commodities Export Co. v. U.S. Customs Service*, 888 F.2d 431 (6th Cir. 1989) (ordering further proceedings in the district court to determine whether the case is in the exclusive jurisdiction of the Court of International Trade).

New clause (5) omits the term "tariffs" from the phrase "otherwise applicable duties, taxes, or fees" because, in strict usage, a tariff is a statute that imposes customs or import duties or taxes, as opposed to the duties or taxes themselves.

(5) Residual Jurisdiction of the Court of International Trade in Customs Enforcement Cases. The legislation amends renumbered clause (6) of section 1581(i) (currently clause (4)) to include administration and enforcement with respect to matters referred to section 1582 of title 28.

The purpose of this amendment is to clarify that aggrieved parties may, in appropriate cases, invoke the residual jurisdiction of Court of International Trade in customs enforcement cases, such as administrative proceedings seeking the imposition of monetary civil penalties for violations of the customs laws or the assessment of liquidated damages for violation of terms of a customs bond. The present law suffers from uncertainty over whether section 1581(i) includes such customs enforcement actions.

The Court of International Trade has jurisdiction under 28 U.S.C. § 1582 in government-initiated lawsuits under the customs penalty laws and other government-initiated enforcement lawsuits. In a number of cases, however, persons aggrieved or adversely affected by customs enforcement actions have sought judicial review by filing their own lawsuits instead of waiting for the government to sue. The present law does not clearly provide that the Court of International Trade has jurisdiction in these cases. As a result, some cases contesting government enforcement measures have been filed in district courts. *See Trayco, Inc. v. United States*, 994 F.2 832 (Fed. Cir. 1993) (holding that the district court has jurisdiction under federal claims jurisdiction over an action to contest payment of a mitigated customs penalty on the

ground that no violation occurred); *Commodities Export Co. v. U.S. Customs Service*, 888 F.2d 431 (6th Cir. 1989) (ordering further proceedings to determine whether an action contesting the imposition of liquidated damages for violation of the customs laws should be heard in the district court or the Court of International Trade).

The new legislation is based on the premise that all litigation arising from customs enforcement actions is logically within the subject matter that Congress intended to assign to the Court of International Trade. The purpose of the amendment is to make it clear that the Court of International Trade does have jurisdiction in importer-initiated lawsuits contesting enforcement under the customs laws, as well as any other cases or controversies arising from any import transaction. The amendment adds a provision to new clause (6) of subsection 1581(i) expressly stating that the Court has jurisdiction over a civil action arising out of administration and enforcement with respect to the matters referred to in 28 U.S.C.§ 1582.

The expansion of residual jurisdiction to cover customs enforcement matters does not duplicate the new protest remedies under section 1514(a) of title 19, United States Code, as added by the proposed legislation and discussed above. The protest remedy added there addresses the assessment and collection of duties, taxes, or charges, or the demand for payment or repayment of duties, taxes, and charges. In contrast, the grant of residual jurisdiction in enforcement cases might be invoked where a party is aggrieved or adversely affected by an administrative or enforcement decision in a civil penalty proceeding, such as the denial of an attempted "prior disclosure" of a violation intended to mitigate exposure to penalties. *See Bridalane Fashions, Inc. v. United States*, 22 CIT 1064, 32 F. Supp. 2d 466 (1998). Furthermore, the proposed legislation does not change the established judicial interpretation of

residual jurisdiction that, where a cause of action would ordinarily be within another jurisdictional grant to the Court (such as section 1581(a) or section 1582), the Court of International Trade has jurisdiction under its grant of residual jurisdiction only when the relief available under other jurisdictional grant is manifestly inadequate or when it is necessary, because of special circumstances, to avoid extraordinary and unjustified delays caused by the exhaustion of administrative remedies. *E.g., Lowa Ltd. v. United States,* 5 CIT 81, 90, 561 F. Supp. 441, 448 (1983), *aff'd on opinion below*, 2 Fed. Cir. (T), 724 F.2d 121 (Fed. Cir. 1984); *accord, e.g., Dennison Mfg. Co. v. United States*, 12 CIT 1, 678 F. Supp. 894 (1988) (applying the "manifestly inadequate" standard and declining jurisdiction under § 1581(i) in a case that would otherwise be within the Court's jurisdiction in an action commenced by the United States under 28 U.S.C. § 1582).

(6) Exclusion of Section 337 Cases. Although the new legislation generally gives the Court of International Trade exclusive jurisdiction in cases involving the importation of merchandise, one exception is that the Court of International Trade does not have jurisdiction under section 337 of the Tariff Act (19 U.S.C. § 1337) unless the statute specifically confers jurisdiction on the Court of International Trade. Federal court jurisdiction in section 337 cases will continue to be vested primarily in the Court of Appeals for the Federal Circuit, including appellate review of the merits of the underlying International Trade Commission determination.

Section 202. Civil Actions Commenced by the United States

Present law

Section 1582 of title 28, United States Code, governs the jurisdiction of the United States Court of International Trade in actions commenced by the United States relating to certain

customs enforcement actions and duty-collection. Under the present law, the Court of International Trade has exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States (1) to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930; (2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or (3) to recover customs duties.

Explanation of provisions

Under the legislation, new subsection (a) of 1582 gives the United States Court of International Trade exclusive jurisdiction of any civil action which is commenced by the United States for the following purposes:

(1) to recover a civil penalty under any provision of the Tariff Act of 1930 or , any other provision of law governing the importation or exportation of merchandise;

(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury;

(3) to recover customs duties; or

(4) to enforce a summons under section 510 of the Tariff Act of 1930.

New subsection (b) of section 1582 gives the Court of International Trade exclusive jurisdiction of any seizure, other than a seizure of narcotics or other controlled substances, under the Tariff Act of 1930 or any provision of law relating to the importation of merchandise

These revisions do not create new causes of action but simply transfer jurisdiction over these types of cases from the district courts to the United States Court of International Trade.

Reasons for changes

The purpose of these amendments is to utilize the judicial resources of the United States Court of International Trade and its expertise in customs and international trade law more effectively in lawsuits initiated by the United States. These lawsuits include additional enforcement cases seeking civil penalties or forfeiture for customs violations.

(1) Civil Penalties: In the present laws, jurisdiction under clause (1) of 28 U.S.C. § 1582 is limited to certain enumerated civil penalties under the customs laws (sections 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), and 734(i)(2) of the Tariff Act of 1930). These sections represented the main customs civil penalties when section 1582 was last amended, but since then a number of additional civil penalties or fines have been enacted, notably including fines for violations of the Foreign-Trade Zones Act (19 U.S.C. § 81s), penalties for intentionally destroying, defacing, or removing country-of-origin labels (*id*. § 1304(*l*)), penalties for violating NAFTA recordkeeping requirements (*id*. § 1508(e)), penalties for violating general recordkeeping requirements (*id*. § 1509(g)), and penalties for aiding and abetting the importation of goods in violation of an American trademark (*id*. § 1526(f)). Actions to recover these penalties are currently within the jurisdiction of the district courts. Logically, all civil actions commenced by the United States to recover civil penalties under the customs and international trade laws should be heard in the Court of International Trade. Therefore, clause (1) of new subsection 1582(a) includes all civil penalties under the Tariff Act of 1930 and clause (2) captures any other import transaction related civil penalties.

Moreover, new clause (1) has the effect of placing jurisdiction in the Court of International Trade for civil penalties assessed for violation of section 337 of the Tariff Act of 1930. Previously, these civil cases were heard in the district courts.

(2) Customs Summonses: The judicial enforcement of CBP summonses to produce records under section 510 of the Tariff Act of 1930 (19 U.S.C. § 1510), presently within the jurisdiction of district courts, is logically related to the subject matter jurisdiction of the United States Court of International Trade, particularly since such a lawsuit might well relate to penalties for violating the recordkeeping requirements. The legislation gives the Court of International Trade jurisdiction of these civil actions in clause (5) of new subsection 1582(a).

(3) Customs Seizures: Besides imposition of civil penalties, an additional tool of customs enforcement in certain cases is the seizure of merchandise. Civil actions for forfeiture and other litigation arising from seizures are logically within the area of responsibility assigned to the Court of International Trade because they involve government action affecting imported goods and often raise issues closely related to customs litigation now conducted in the Court of International Trade.

The allocation of jurisdiction over customs seizures to district courts in the present law has created some anomalies. First, although the main customs penalty statute (section 592 of the Tariff Act of 1930, 19 U.S.C. § 1592) is within the jurisdiction of the Court of International Trade, that statute currently provides for forfeiture only in very limited situations. Therefore, nearly all cases in which the government wishes to seek both forfeiture and recovery of customs penalties must be bifurcated between a district court for the forfeiture and the Court of International Trade for the penalties. Second, in some instances, a case has begun as an

"exclusion" of merchandise that is subject to judicial review in the Court of International Trade, but later was converted into a "seizure" that is subject to judicial review in a district court. Thus, giving the Court of International Trade jurisdiction over statutes providing for seizure and judicial forfeiture will promote jurisdictional clarity and logic.

By assigning jurisdiction over customs seizures to the Court of International Trade, new section 1582(b) changes the existing allocation of jurisdiction in government seizure cases between the Court of International Trade and district courts. It is noted that government enforcement officials may seize goods in import transactions under a broad range of statutes, some of which are not contained in the Tariff Act of 1930, and that seizures under the Tariff Act includes seizures of narcotics and other controlled substances as well as merchandise in commercial transactions. The legislation addresses this situation by (1) excluding seizures of narcotics or other controlled substances from the Court of International Trade because these cases are qualitatively different from the type of cases traditionally heard in the Court, and (2) by including a general provision that seizures relating to a prohibition or condition on the importation of merchandise should be heard at the Court of International Trade. This language reinforces the intent that the Court should have jurisdiction over all import-related seizure actions. The intent of the legislation is that the Court of International Trade will have jurisdiction if the enumerated statutes provide the basis for a seizure, regardless of whether additional statutory bases for the seizure are also invoked.

Sections 203 and 204. Standing and Statute of Limitations.

Present Law

Sections 2631 and 2636 of Title 28 delineate the standing requirements and statute of limitations for actions brought against the United States. The present law does not provide for standing and a statute of limitations in all cases involving suspension, revocation, or denial of a customs broker license or permit.

Explanation of provision

The legislation expands the provisions to include all types of cases involving suspension, revocation, or denial of a customs broker license or permit.

Reason for change

The proposed legislation updates these provisions to reflect the expansion of the Court's jurisdiction in section 201 of this Act to cover all actions related to the suspension, revocation, or denial of a customs broker license or permit.

Section 205. Payment of Liquidated Duties, Charges, Or Exactions Before Protest Litigation.

Present Law

Section 2637(a) of title 28, United States Code, provides that a civil action contesting the denial of a protest may be commenced in the Court of International Trade only after all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

Explanation of provisions

The proposed legislation adds a sentence to section 2637(a) stating that the term "liquidated duties, charges, or exactions" shall not include duties, taxes, or fees that are the subject of a demand for payment or repayment otherwise than in accordance with sections 500

and 501 of the Tariff Act of 1930 (19 U.S.C. §§ 1500 & 1501), including but not limited to denials of requests for offsets pursuant to section 509 (b)(6)(A) of such Act (19 U.S.C. § 1509(b)(6)(A)).

Reasons for change

The amendment is related to the procedure under new clause (9) of section 514(a) of the Tariff Act, for protests against CBP demands for payment or repayment of duties, taxes, and fees otherwise than in accordance with sections 500 and 501 of the Tariff Act, including but not limited to denials of requests for offsets pursuant to section 509 (b)(6)(A) of the Tariff Act. As discussed above, the new protest procedure is intended to parallel existing internal revenue tax procedures by allowing the importer-taxpayer to file a protest against a CBP demand for payment or repayment of duties, taxes, charges, in the same way that a taxpayer may contest a deficiency assessment in income tax procedures. The amendment to section 2637 of title 28, United States Code, is intended to make it clear that the party filing a protest against a CBP demand for payment or repayment is not required, as a prerequisite to commencing judicial review in the Court of International Trade, to pay the amount that CBP demands. It is understood that the amount being demanded is not "liquidated" in the traditional customs sense that CBP officially fixed the rate and amount of duties, taxes, or charges by liquidating the entry or entries in issue pursuant to section 500 or 501 of the Tariff Act.

As noted above, if an importer elects to file a civil action contesting the denial of a protest against a CBP demand for payment or repayment without paying the demanded amount of duties, taxes, or charges, prior to the commencement of the action, interest on the demanded amount will continue to accrue.

Section 206. Relief

Present Law

Section 2643 delineates the relief in the types of cases that come before the Court of International Trade. The present law does not provide for relief in all cases involving suspension, revocation, or denial of a customs broker license or permit.

Explanation of provision

The legislation expands the relief section to include all types of cases involving suspension, revocation, or denial of a customs broker license or permit.

Reason for change

The proposed legislation updates these provisions to reflect the expansion of the Court's jurisdiction in section 201 of this Act to cover all actions related to the suspension, revocation, or denial of a customs broker license or permit.

TITLE III: REFERENCES AND EFFECTIVE DATE

Section 401. References

Present Law

No provision.

Explanation of change

The provision states that any reference in the proposed legislation to the "Bureau of Customs and Border Protection" or the "Customs Service" shall be considered to be a reference to "U.S. Customs and Border Protection" of the Department of Homeland Security.

Reasons for change

As a number of existing statutory provisions have not been amended to reflect the change in name from "Bureau of Customs and Border Protection" or "Customs Service" to "United States Customs and Border Protection," this provision makes it clear that any reference to the agency's old name shall be considered to be a reference to its new name.

Section 402. Effective Date.

Present Law

No provision.

Explanation of change

The provision states that the amendments made by the proposed legislation shall take effect 60 days after the legislation is enacted.

Changes in Existing Law Made by the Proposed Legislation

Title 19, United States Code:

§ 1504. Limitation on liquidation

(a) Liquidation

(1) Entries for consumption

Unless an entry of merchandise for consumption is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 1675 (a)(3) **or section 1516a (c) (4)** of this title, an entry of merchandise for consumption not liquidated within 1 year from—

***

(d) Removal of suspension

Except as provided in section 1675 (a)(3) of this title, when a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry, unless liquidation is extended under subsection (b) of this section, within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with respect to which liquidation has been extended under subsection (b) of this section) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record or (in the case of a drawback entry or claim) at the drawback amount asserted by the drawback claimant **except for those entries covered by the prohibition in section 1516a(c) (4) of this title.**

§ 1514. Protest against decisions of the Customs Service

(a) Finality of decisions; return of papers. Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), section 1520 of this title (relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to ―

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;

(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof , including the liquidation of an entry, pursuant to either section 500 or section 504;

(6) the refusal to pay a claim for drawback;

(7) the refusal to reliquidate an entry under section 520(d) of this Act;

(8) the assessment or collection of duties, taxes, or fees, whether or not voluntarily tendered, under section 592(c) or (d) or section 593A(c) or (d) of this Act; or

(9) a demand for payment or repayment of duties, taxes, and fees otherwise than in accordance with sections 500 and 501 of this Act, including but not limited to denials of requests for offsets pursuant to section 509 (b)(6)(A) of this Act;

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title; **Notwithstanding the previous sentence, if a protest is not filed with respect to a decision described in paragraph (9), the existence and amount of liability for duties, taxes, or fees requested to paid or repaid in the decision shall not be final and conclusive on any party for purposes of a civil action commenced by the United States in the United States Court of International Trade in accordance with section 1582 of Title 28.** When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

....

(c) Form, number, and amendment of protest; filing of protest

...

(2) Except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by ―

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback;

(E) with respect to a determination of origin under section 3332 of this title, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise;

(F) with respect to a decision described in paragraph (8) or (9) of subsection (a)—

(i) any person against whom duties, taxes, or fees are assessed, or from whom duties, taxes, or fees are collected;

(ii) any person to whom a demand is made by the U.S. Customs and Border Protection for payment or repayment of duties, taxes, and fees;

(iii) any person who tenders duties, taxes, or fees to the U.S. Customs and Border Protection, whether or not voluntarily; or

(iv) any person whose request for an offset pursuant to section 509(b)(6)(A) is denied, in whole or in part;

or

(G) any authorized agent of any of the persons described in clauses (A) through **(F)**.

(c) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made. **The date of a decision as to assessment or collection of duties, taxes, or fees under section 592(c) or 593A(c) of this Act is each of (i) the date on which U.S. Customs and Border Protection receives a tender of the duties, taxes, or fees, (ii) the date on which U.S. Customs and Border Protection informs the person making a prior disclosure of the amount of duties, taxes, or fees required to be tendered, and (iii) the date on which U.S. Customs and Border Protection informs the person making any such tender that the tender has been accepted and the matter is considered closed.**

….

§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings

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(c) Liquidation of entries

(1) Liquidation in accordance with determination

Unless such liquidation is enjoined by the court **or suspended** under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Suspension of liquidation and injunctive relief

(A) In the case of a determination described in clause (iii) or (iv) of subsection (a) (2) (B) of this section for which judicial review is requested, liquidation of the entries of merchandise that are covered by the action is suspended and the administering authority shall not issue instructions to Customs under section 1675 (a) (3) (B) for those entries pending the final disposition by the court, including all appeals. The court may order the administering authority to lift the suspension of liquidation before the final decision by the court, upon request by an interested party for such relief and to showing that the requested relief should be granted under the circumstances.

(B) In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, **the liquidation of which was not suspended as provided in (A) of this subsection**, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

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(4) The provisions of section 1504 (d) of this title do not apply to any entries subject to an appeal under subsection (a) of this section.

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(e) Liquidation in accordance with final decision

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined **or suspended** under subsection (c)(2) of this section, shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision. **Any liquidation not in such accordance is void.**

Sec. 1641. Customs brokers

[Subsections (a) – (d) omitted]

(e) Judicial appeal

(1) In general. A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c) of this section, or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a **summons and complaint** requesting that the decision or order be modified or set aside in whole or in part. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, after receipt of the **summons and complaint** the Secretary shall file in court

the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28.

Sec. 1675. Administrative review of determinations

(a) Periodic review of amount of duty

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(3) Time limits

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(B) Liquidation of entries

If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), **the suspension of liquidation under section 1673b(d)(2) shall remain in effect until time for appeal under section 1516a has elapsed.** Liquidation shall be made promptly **after that time** and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued **unless suspension of liquidation remains in effect pursuant to section 1516(a)(C)(2)(A)**. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof. **The administering authority must not issue instructions to Customs until the time for appeal under section 1516a of this title has elapsed.**

(C) Effect of pending review under section 1516a

In a case in which a final determination under paragraph (1) is under review under section 1516a of this title and a liquidation of entries covered by the determination is enjoined or suspended **under that section**, the administering authority shall, within 10 days after the final disposition of the review under section 1516a of this title, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

Title 28, US Code:

Sec. 1581. Civil actions against the United States and agencies and officers thereof

[Subsections (a) - (f) omitted]

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury **under section 641 the Tariff Act of 1930 to suspend, revoke, or** deny a customs broker's license **or permit or impose a monetary penalty in lieu thereof; and**

(2) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

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(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a) through (h) of this section and subject to the **exceptions** set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for ─

(1) revenue from imports or tonnage;

(2) tariffs, duties, **taxes, or** fees~~, or other taxes~~ on the importation of merchandise ~~for reasons other than the raising of revenue~~;

(3) embargoes or other quantitative restrictions on the importation of merchandise;

(4) any prohibition or condition on the importation of merchandise;

(5) importation without otherwise applicable duties, taxes, or fees on the importation of merchandise, or deferral of such duties, taxes, or fees; or

(6) administration and enforcement with respect to the matters referred to in paragraphs (1)-~~(3)~~ (**5**) of this subsection, subsections (a) through (h) of this section**, and section 1582 of this title**.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

(j) The Court of International Trade shall not have jurisdiction of any civil action arising

under section 305 of the Tariff Act of 1930 **or any civil action arising under section 337 of the Tariff Act of 1930**.

Sec. 1582. Civil actions commenced by the United States

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action which is commenced by the United States ─

(1) to recover a civil penalty under any provision of the Tariff Act of 1930;

(2) to recover a civil penalty arising from any prohibition or condition on the importation of merchandise;

(3) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury;

(4) to recover customs duties; or

(5) to enforce a summons under section 510 of the Tariff Act of 1930 (19 U.S.C. 1510).

(b) The United States Court of International Trade shall have exclusive jurisdiction of any seizure of merchandise that is imported or attempted to be imported, other than a seizure of narcotics or other controlled substances, under any provision of the Tariff Act of 1930 or any provision setting forth a prohibition or condition on the importation of merchandise.

Sec. 2631. Persons entitled to commence a civil action

[Subsections (a) - (f) omitted]

(g) (1) A civil action to review any decision of the Secretary of the Treasury to **suspend, revoke, or** deny a customs broker's license **or permit or impose a monetary penalty in lieu thereof** under section 641 of the Tariff Act of 1930 may be commenced in the **United States** Court of International Trade by the person whose license or permit was **suspended,** revoked, or denied, **or by the person against whom the decision was issued**.

(2) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

Sec. 2636. Time for commencement of action

[Subsections (a) through (f) omitted]

(g) A civil action contesting **any decision of the Secretary of the Treasury to suspend, revoke, or deny a customs broker's license or permit or impose a monetary penalty in lieu thereof under section 641 of the Tariff Act of 1930** is barred unless commenced in accordance with the rules of the **United States** Court of International Trade within sixty days after the date of the entry of the **final** decision or order of such Secretary.

Sec. 2637. Exhaustion of administrative remedies

(a) **(1)** A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

(2) In this subsection, the term "liquidated duties, charges, or exactions" does not include duties, taxes, or fees that are the subject of a demand for payment or repayment other than in accordance with sections 500 and 501 of the Tariff Act of 1930 (19 U.S.C. 1500 & 1501), including denials of a requests for offsets pursuant to section 509 (b)(6)(A) of such Act (19 U.S.C. 1509(b)(6)(A)).

[Subsections (b) through (d) omitted]

Sec. 2643. Relief

[Subsections (a) - (d) omitted]

(e) In any proceeding involving assessment or collection of a monetary penalty under section **641**of the Tariff Act of 1930, the court may not render judgment in an amount greater than that sought in the initial pleading of the United States, and may render judgment in such lesser amount as shall seem proper and just to the court.