

S. _____

To improve the laws concerning judicial review of international trade and customs law matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. ~~SPECTER~~ SCHUMER introduced the following bill; which was read twice and referred to the Committee on

A BILL

To improve the laws concerning judicial review of international trade and customs law matters, and for other purposes.

1 *Be it enacted by the Senate and House of Represen-*
2 *tatives of the United States of America in Congress assem-*
3 *bled,*

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the AUnited States Court of
6 International Trade Improvement Act-~~of 2008~~".

1 **TITLE I C A M E N D M E N T S T O T H E**
2 **T A R I F F A C T O F 1 9 3 0**

3
4 **SEC. 101. TESTIMONY AND PRODUCTION OF PAPERS.**

5 Section 333 of the Tariff Act of 1930 (19 U.S.C. 1333) is
6 amendedC

7 (1) in subsection (b)C

8 (A) by striking Aany district or territorial court of the United
9 States@ and inserting Athe United States Court of International
10 Trade@;

11 (B) by striking Asuch court within the jurisdiction of which
12 such inquiry is carried on@ and inserting Athe United States Court
13 of International Trade@; and

14 (C) by striking Asuch@ after Apunished by@ and inserting
15 Athe@; and

16 (2) in subsection (c), by striking Aany such court@ and inserting
17 Athe United States Court of International Trade@.

18 **SEC. 102. CEASE AND DESIST ORDERS.**

19 Section 337(f)(2) of the Tariff Act of 1930 (19 U.S.C. 1337(f)(2))
20 is amendedC

1 (1) by striking “Federal District Court for the District of Columbia
2 or for the district in which the violation occurs” and inserting “United
3 States Court of International Trade”;

4 (2) by striking “the United States district courts” and inserting
5 “the United States Court of International Trade”; and

6 (3) by striking “they deem” and inserting “it deems”.

7 **SEC. 103. FINALITY OF CUSTOMS SERVICE DECISIONS.**

8 Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is
9 amended:

10 (1) in paragraph (4), by inserting after “delivery” the following:
11 “(including a decision prohibiting a carrier from transporting
12 merchandise to the customs territory of the United States)”;

13 (2) in paragraph (6), by striking “or” at the end;

14 (3) by inserting after paragraph (7) the following new paragraphs:

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

18 (9) a demand for payment or repayment of duties, taxes,
19 and fees other than in accordance with sections 500 and 501 of
20 this Act, including denials of requests for offsets pursuant to
21 section 509(b)(6)(A) of this Act; and

1 (4) by inserting after Awithin the time prescribed by section 2636
2 of that title. @ the following: ANotwithstanding the previous sentence, if
3 a protest is not filed with respect to a decision described in paragraph
4 (9), the existence and amount of liability for duties, taxes, or fees
5 requested to be paid or repaid in the decision shall not be final and
6 conclusive on any party for purposes of a civil action commenced by the
7 United States in the United States Court of International Trade in
8 accordance with section 1582 of title 28, United States Code. @.

9 **SEC. 104. PROTESTS.**

10 Section 514(c)(2) of the Tariff Act of 1930 (19 U.S.C.
11 1514(c)(2)) is amendedC

12 (1) by redesignating subparagraph (F) as subparagraph (H);

13 (2) in subparagraph (H), as redesignated, by striking A(E)@ and
14 inserting A(G)@; and

15 (3) by striking Aor@ at the end of subparagraph (E) and inserting
16 after subparagraph (E) the following new subparagraphs:

17 A(F) with respect to a decision described in paragraph

18 (4) of subsection (a) prohibiting a carrier from transporting
19 merchandise to the customs territory of the United States, a shipper,
20 consignee, or carrier of the merchandise involved;

21 A(G) with respect to a decision described in paragraph (8) or (9) of
22 subsection (a)C

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

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

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

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

10 **SEC. 105. JUDICIAL REVIEW IN COUNTERVAILING DUTY**
11 **AND ANTIDUMPING PROCEEDINGS**

12 516A(b) of the Tariff Act of 1930 (19 U.S.C. 1516a(b)) is
13 amended B

14 (1) by striking ARemedy@ in the caption to
15 subparagraph (1), and inserting ALegal Standard@ and

16 (2) by striking Acourt@ in subparagraph (1), and inserting
17 AUnited States Court of International Trade@.

18 (3) by redesignating paragraphs (2) and (3) thereof as
19 paragraphs (3) and paragraph (4), respectively, and by inserting in
20 numerical order the following new paragraph (2) thereof:

21 A(2) Appellate Review

1 (A) Except as provided in subparagraphs (B) and (C)
2 of this paragraph, the United States Court of Appeals for
3 the Federal Circuit shall, for purposes of appellate
4 review in any appeal from any decision of the United
5 States Court of International Trade governed by
6 paragraph (1) of this subsection, apply anew the legal
7 standard set out in paragraph (1) of this subsection.

8 (B) For purposes of appellate review of any
9 ruling by the United States Court of
10 International Trade pursuant to clause (A) or
11 (B)(ii) of paragraph (1) of this subsection as to
12 whether the agency determination, finding, or
13 conclusion was arbitrary, capricious, or an
14 abuse of discretion, the United States Court of
15 Appeals for the Federal Circuit shall determine
16 whether the United States Court of International
17 Trade misapprehended or grossly misapplied the
18 standard of arbitrary, capricious, or an abuse of
19 discretion.

20 (C) For purposes of appellate review of
21 any ruling by the United States Court of

1 International Trade pursuant to clause (B)(i)
2 of paragraph (1) of this subsection as to
3 whether the agency determination, finding, or
4 conclusion was unsupported by substantial
5 evidence on the record, the United States
6 Court of Appeals for the Federal Circuit shall
7 determine whether the United States Court of
8 International Trade misapprehended or grossly
9 misapplied the standard of unsupported by
10 substantial evidence on the record.

11 **SEC. 106. CUSTOMS BROKERS.**

12 Section 641(e)(1) of the Tariff Act of 1930 (19 U.S.C. 1641(e)(1))
13 is amended B

14 (1) in the first sentence, by striking Awritten petition@ and inserting
15 Asummons and complaint@;

16 (2) by striking the sentence “A copy of the petition shall be
17 transmitted promptly by the clerk of the court to the Secretary or his
18 designee.”; and

19 (3) in the third sentence, by striking Apetition@ and inserting
20 Asummons and complaint@.

21 **SEC. 107. INTERRUPTED SUSPENSION OF LIQUIDATION.**

1 (1) Section 705(c) of the Tariff Act of 1930 (19 U.S.C. 1671d(c))

2 is amended—

3 (A) in subparagraph (1)

4 (i) by striking “and” at the end of subsection (B)(ii);

5 (ii) by inserting “and” at the end of subsection (C); and

6 (iii) by inserting at the end a new paragraph (D) as

7 follows: “In cases where suspension of liquidation was lifted

8 under section 703(d) because the instructions under that

9 paragraph remained in effect for longer than 4 months, the

10 administering authority shall order the suspension of

11 liquidation of all entries of merchandise subject to the

12 determination which are entered, or withdrawn from

13 warehouse, for consumption on or after the date on which

14 notice of the final determination is published in the Federal

15 Register.”

16 (B) in subparagraph (2)(A), by inserting after “703(d)(2)” the

17 following, “31 days after the publication of notice of the negative

18 determination.”

19 (2) Section 735(c) of the Tariff Act of 1930 (19 U.S.C. 1673d(c))

20 is amended—

21 (A) in subparagraph (1)

22 (i) by striking “and” at the end of subsection (B)(ii);

1 (ii) by inserting “and” at the end of subsection (C); and

2 (iii) by inserting at the end at new paragraph (D) as
3 follows: “In cases where suspension of liquidation was lifted
4 under section 733(d) because the instructions under that
5 paragraph remained in effect for longer than 4 or 6 months,
6 the administering authority shall order the suspension of
7 liquidation of all entries of merchandise subject to the
8 determination which are entered, or withdrawn from
9 warehouse, for consumption on or after the date on which
10 notice of the final determination is published in the Federal
11 Register.”

12 (B) in subparagraph (2)(A), by inserting after “703(d)(2)” the
13 following, “31 days after the publication of notice of the negative
14 determination.”

15 **SEC. 108. LIQUIDATION IN ANTIDUMPING AND**
16 **CONTERVAILING DUTY CASES**

17 Section 751(a)(3) of the Tariff Act of 1930 (19 U.S.C.
18 1675(a)(3)) is amended—

19 (1) in subsection (B) –

20 (A) by inserting before the first sentence the heading, “(i)
21 Prompt Liquidation.”;

22 (B) by inserting before the second sentence the heading,
23 “(ii) Delayed Liquidation.”;

1 (C) by inserting at the end of new subparagraph (B)(ii)the
2 following, “If liquidation under this section is delayed beyond
3 such period, or any period specified in section 504(d) of this Act,
4 the deemed liquidation provisions thereof shall not apply.”; and

5 (D) by inserting a new subparagraph (B)(iii) as follows:
6 “Customs Instructions. – The administering authority must not
7 issue instructions to Customs until the time for appeal under
8 section 516(a) of this Act has elapsed.”.

9 (2) in subsection (C)—

10 (A) by striking “under section 516A(C)(2)” after “enjoined”
11 and “under section 516A(g)(5)(C)” after “suspended” and

12 (B) by inserting “under that section” after “suspended”.

13 **TITLE II B AMENDMENT TO THE**
14 **NORTH AMERICAN FREE TRADE**
15 **AGREEMENT IMPLEMENTATION**
16 **ACT**

17
18 **SEC. 201. NAFTA.**

19 Section 403 of the North American Free Trade Agreement
20 Implementation Act (19 U.S.C. 3433) is amendedC

21 (1) in subsection (b) C

1 (A) by striking Any district or territorial court of the
 2 United States@ and inserting Athe United States Court of
 3 International Trade@; and

4 (B) by striking ASuch court, within the jurisdiction of
 5 which such inquiry is carried on@ and inserting Athe United
 6 States Court of International Trade@; and

7 (2) in subsection (c), by striking AAny court referred to in
 8 subsection (b) of this section@ and inserting AThe United States
 9 Court of International Trade@.

10 **TITLE III C A M E N D M E N T S T O**
 11 **TITLE 28, UNITED STATES CODE**

12
 13 **SEC. 301. CIVIL ACTIONS AGAINST THE UNITED STATES.**

14 Section 1581 of title 28, United States Code, is amendedC

15 ~~(1) in subsection (d)—~~

16 ~~(A) in paragraph (1), by inserting “and” at the end;~~

17 ~~(B) in paragraph (2), by striking “;and” and inserting a~~

18 ~~period; and~~

19 ~~(C) by striking paragraph (3);~~

20 (1) ~~(2)~~ in subsection (g) B

21 (A) by amending paragraph (1) to read as follows:

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

5 (B) by striking paragraph (2); and

6 (C) by redesignating paragraph (3) as paragraph (2).

7 (2) ~~(3)~~ in subsection (h), by striking Ahe would be irreparably
8 harmed unless@, and inserting Athere is good cause for the party to
9 be@;

10 (3) ~~(4)~~ by redesignating subsections (i) and (j) as subsections (j)
11 and ~~(j)~~ (k), respectively;

12 (4) ~~(5)~~ by inserting after subsection (h) the following:

13 A(i) The United States Court of International Trade shall
14 have exclusive jurisdiction of any civil action commenced
15 against the United States, its agencies, or its officers, that arises
16 out of any of the following statutes:

17 “(1) The Export Administration Act of 1979
18 (50 U.S.C. App. 2401 et seq.).

19 “(2) The International Emergency Economic Powers
20 Act (50 U.S.C. 1701 et seq.).

21 “(3) The Trading with the Enemy Act (50 U.S.C.
22 App. 1 – 44).

1 “(4) Sections 38, 72, 73, and 81 of the Arms Export
2 Control Act (22 U.S.C. 2778, 2797a, 2797b, and
3 2798).

4 “(5) The Iraq Sanctions Act of 1990 (50 U.S.C. 1701
5 note).

6 “(6) The Foreign Narcotics Kingpin Designation Act
7 (21 U.S.C. 1901 et seq.).

8 “(7) The Clean Diamond Trade Act (19 U.S.C. 3901 –
9 3913).”;

10 ~~(5) (6)~~ in subsection (j), as redesignated by paragraph (4) of this
11 sectionC

12 (A) by striking A subsections (a)-(h) of this section and
13 subject to the exception set forth in subsection (j)@ and
14 inserting A subsections (a) through (i) and the exceptions set
15 forth in subsection ~~(j)~~ (k)@;

16 (B) in paragraph (1), by striking “imports or”;

17 (C) in paragraph (2) –

18 (i) by inserting “taxes or,” after “duties”;

19 (ii) by striking “, or other taxes”;

20 (iii) by inserting “or exportation” after “importation”;

21 and

1 (iv) by striking “for reasons other than the raising of
2 revenue”.

3 (D) ~~(B)~~ in paragraph (3) –

4 (i) by adding “or exportation” after “importation”; and

5 (ii) by striking A for reasons other than the protection

6 of the public health or safety; or ~~and~~

7 (E) by renumbering paragraph (4) as paragraph (6);

8 (F) by inserting a new paragraph (4) as follows:

9 “(4) any prohibition or condition on the importation or

10 exportation of merchandise;”;

11 (G) by inserting a new paragraph (5) as follows:

12 “(5) importation or exportation without otherwise applicable

13 duties, fees, or other taxes on the importation or exportation of

14 merchandise, or deferral of such duties, fee, or other taxes; or”

15 (H) ~~(C)~~ in paragraph ~~(4)~~ (6) as renumbered by

16 subparagraph (E), by striking A, and subsections (a) ~~B~~(h) of this

17 section ~~and~~ and inserting A, subsections (a) through (i) of this

18 section, and subsections (a) and (b) of section 1582 of this

19 title ~~and~~;

20 ~~(7) by inserting before subsection (1), as redesignated by~~

21 ~~paragraph (4) of this subsection the following:~~

~~A(k) In addition to the jurisdiction conferred upon the
 United States Court of International Trade by subsections (a)
 through (j) of this section, and subject to the exceptions set
 forth in subsection (1) of this section, the United States Court
 of International Trade shall have exclusive original jurisdiction
 over any other civil action, concurrent with the United States
 Court of Federal Claims and with the district courts, of against
 the United States or its agencies directly affecting imports or
 exports arising out of any provisions set forth in Title 19,
 United States Code; and~~

(6) (8) in subsection (4) (k) as redesignated by paragraph (4) of
 this section, by inserting before the period Aor any civil action arising
 under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), for
 which jurisdiction is specifically conferred upon the United States
 International Trade Commission or the United States Court of
 Appeals for the Federal Circuit@.

SEC. 302. CIVIL ACTIONS COMMENCED BY THE UNITED STATES.

(a) IN GENERAL.— Section 1582 of title 28, United States Code is amended to read as follows:

§ 1582. Civil actions commenced by the United States

1 A(a) The United States Court of International Trade shall
2 have exclusive jurisdiction of any civil action which is
3 commenced by the United States^C

4 A(1) to recover a civil penalty under –

5 (A) section 304 or 305 of title 13, United States

6 Code;

7 (B) section 2339B(b) of title 18, United

8 States Code;

9 (C) any provision of the Tariff Act of 1930;

10 (D) ~~(C)~~ section 1906 (b) of the Intelligence

11 Authorization Act for Fiscal Year 2000 (21 U.S.C.

12 1906(b));

13 (E) ~~(D)~~ section 38(e), 39A(c), or 40(k) of the

14 Arms Export Control Act (22 U.S.C. 2778(e),

15 2779a(c), or 2780(k));

16 (F) ~~(E)~~ the Cuban Democracy Act of 1992 (22

17 U.S.C. 6001 et seq.);

18 (G) ~~(F)~~ section 234 of the Atomic Energy Act of

19 1954 (42 U.S.C. 2282) (to the extent the penalty

20 involves a violation of section 53, 57, 62, 81, 82, 101,

21 103, or 109 of such Act (42 U.S.C. 2073, 2077,

1 2092, 2111, 2112, 2131, 2133, or 2139) and is related
2 to imports or exports);

3 (H) ~~(G)~~ the International Emergency Economic
4 Powers Act (50 U.S.C. 1701 et seq.);

5 (I) ~~(H)~~ the Iraq Sanctions Act of 1990 (50 U.S.C.
6 1701 note);

7 (J) ~~(I)~~ section 16(b) of the Trading with the
8 Enemy Act (50 U.S.C. App. 16(b)); or

9 (K) ~~(J)~~ section 11(c) of the Export Administration
10 Act of 1979 (50 U.S.C. App. 2410(c));

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

14 A(3) ~~(2)~~ to recover upon a bond relating to the
15 importation of merchandise required by the laws of the
16 United States or by the Secretary of the Treasury;

17 A(4) ~~(3)~~ to recover customs duties; or

18 A(5) ~~(4)~~ to enforce a summons under section 510 of
19 the Tariff Act of 1930 (19 U.S.C. 1510).

20 A(b) The United States Court of International Trade shall
21 have exclusive jurisdiction of any seizure, other than a seizure
22 of narcotics or other controlled substances, under C

1 A(1) ~~any provision of the Tariff Act of 1930 or any~~
 2 ~~other provision set forth in title 19, United States Code;~~

3 A(2) the Trading with the Enemy Act (50 U.S.C. App.
 4 1 et seq.); ~~or~~

5 A(3) section 1 of title VI of the Act of June 15, 1917,
 6 (22 U.S.C. 401; 40 Stat. 233); ~~or~~

7 “(4) any provision setting forth a prohibition or
 8 condition on the importation or exportation of
 9 merchandise.”

10 A(c) The United States Court of International Trade shall
 11 have exclusive jurisdiction of any civil action which is
 12 commenced by the United States for the purpose of declaring a
 13 provision of State law, or its application, invalid as inconsistent
 14 with any international agreement giving the United States such
 15 a cause of action. @.

16 **SEC. 303. FALSE CLAIMS ACT AND QUI TAM IN TRADE**
 17 **RELATED CASES.**

18 Chapter 95 of title 28, United States Code, is amended by adding
 19 at the end the following:

20 **“§ 1586. FALSE CLAIMS ACT AND QUI TAM IN TRADE**
 21 **RELATED CASES.**

22 The United States Court of International Trade shall have
 23 exclusive jurisdiction of any civil action brought by the United States

1 government under section 3729 of Title 31, United States Code, or by a
2 private person under section 3730 of Title 31, United States Code,
3 when the claims relate to any import or export transaction.”

4 **SEC. 304 303. PERSONS ENTITLED TO COMMENCE A**
5 **CIVIL ACTION**

6 Section 2631 of title 28, United States Code, is amended B

7 (1) by striking paragraph (3) of subsection (d);

8 (2) in subsection (g) B

9 (A) by amending paragraph (1) to read as follows:

10 A(1) A civil action to review any decision of the Secretary
11 of the Treasury to suspend, revoke, or deny a customs broker’s
12 license or permit or impose a monetary penalty in lieu thereof
13 under section 641 of the Tariff Act of 1930 (19 U.S.C. 1641)
14 may be commenced in the United States Court of International
15 Trade by the person whose license or permit was suspended,
16 revoked, or denied, or by the person against whom the decision
17 was issued. @;

18 (B) by striking paragraph (2); and

19 (C) by redesignating paragraph (3) as paragraph (2); and

20 (3) in subsection (i), by striking A(a)-(h)@ and inserting

21 A(a)-(j)@.

22 **SEC. 305 304. TIME FOR COMMENCEMENT OF ACTION.**

1 Section 2636 of title 28, United States Code is amended B
2 (1) in subsection (d), by striking Aor section 271 of such Act";
3 (2) by amending subsection (g) to read as follows:
4 A(g) A civil action contesting any decision of the Secretary of
5 the Treasury to suspend, revoke, or deny a customs broker=s
6 license or permit or impose a monetary penalty in lieu thereof
7 under section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) is
8 barred unless commenced in accordance with the rules of the
9 United States Court of International Trade within 60 days after
10 the date of the entry of the decision or order of such
11 Secretary.© and;
12 (3) in subsection (i), by striking A(a)-(h)© and inserting A(a)-
13 (j)©.

14

1 **SEC. ~~306~~ ~~305~~. EXHAUSTION OF ADMINISTRATIVE**
2 **REMEDIES.**

3 Section 2637(a) of title 28, United States Code, is amended^B

4 (1) by inserting A(1)[@] after Aa civil action[@]; and

5 (2) by adding at the end the following:

6 A(2) In this subsection, the term >liquidated duties,
7 charges, or exactions= does not include duties, taxes, or fees
8 that are the subject of a demand for payment or repayment
9 other than in accordance with sections 500 and 501 of the Tariff
10 Act of 1930 (19 U.S.C. 1500 and 1501), including denials of
11 requests for offsets under section 509(b)(6)(A) of such Act (19
12 U.S.C. 1509(b)(6)(A)).[@].

13 **SEC. ~~307~~ ~~306~~. SCOPE AND STANDARD OF REVIEW.**

14 Section 2640(c) of title 28, United States Code, is amended by
15 striking “or section 271”.

16 **SEC. ~~308~~ ~~307~~. RELIEF.**

17 Section 2643 of title 28, United States Code, is amended ^B

18 (1) in subsection (c)(2), by striking “or section 271”; and

19 (2) in subsection (e), by striking “641(b)(6) or 641(d)(2)(A)”

20 and inserting “641”.

1 **SEC. 309 308. ALTERNATIVE DISPUTE RESOLUTION**
2 **PROCEDURES.**

3 (a) IN GENERAL. Chapter 169 of title 28, United States
4 Code, is amended by adding at the end the following:

5 **“§ 2647. Alternative dispute resolution procedures**

6 A(a) The United States Court of International Trade shall
7 authorize by rule the use of alternative dispute resolution
8 processes in civil actions other than civil actions arising under
9 title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.)
10 (relating to countervailing duty and antidumping duty
11 proceedings), except that the use of arbitration may be
12 authorized only as provided in subsection (j). For purposes of
13 this section, an alternative dispute resolution process includes
14 any process or procedure, other than an adjudication by a
15 presiding judge, in which a neutral third party participates to
16 assist in the resolution of issues in controversy, through
17 processes such as early neutral evaluation, mediation, minitrial,
18 and arbitration.

19 A(b) The Chief Judge of the United States Court of
20 International Trade shall designate an employee, or a judicial
21 officer, who is knowledgeable in alternative dispute resolution
22 practices and processes to implement, administer, oversee, and

1 evaluate the court=s alternative dispute resolution program.

2 Such person may also be responsible for recruiting, screening,
3 and training attorneys to serve as neutrals and arbitrators in the
4 court=s alternative dispute resolution program.

5 A(c) This section shall not affect of title 9, United States
6 Code.

7 A(d) The Federal Judicial Center and the Administrative
8 Office of the United States Courts are authorized to assist the
9 United States Court of International Trade in the establishment
10 and improvement of alternative dispute resolution programs by
11 identifying particular practices employed in successful programs
12 and providing additional assistance as needed and appropriate.

13 A(e) Except as provided under subsections (f) and (g), the
14 United States Court of International Trade shall provide by rule
15 that litigants in all civil cases other than civil actions arising
16 under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et
17 seq.) consider the use of an alternative dispute resolution
18 process at an appropriate stage in the litigation. The court shall
19 provide litigants in civil cases with at least 1 alternative dispute
20 resolution process, including early neutral evaluation,
21 mediation, minitrial, and arbitration, as authorized under this
22 section.

1 A(f) The United States Court of International Trade may
2 exempt from the requirements of this section specific cases or
3 categories of cases in which the use of alternative dispute
4 resolution would not be appropriate. In defining the
5 exemptions, the court shall consult with members of the bar,
6 including the responsible Assistant Attorney General.

7 A(g) Nothing in this section shall alter or conflict with the
8 authority of the Attorney General to conduct litigation on
9 behalf of the United States, with the authority of any Federal
10 agency authorized to conduct litigation in the United States
11 courts, or with any delegation of litigation authority by the
12 Attorney General.

13 A(h) The United States Court of International Trade shall
14 provide by rule for the confidentiality of alternative dispute
15 resolution processes and for the prohibition of disclosure of
16 confidential dispute resolution communications.

17 A(i) The United States Court of International Trade shall
18 adopt appropriate processes for making neutrals available for
19 use by the parties for each category of process offered. The
20 Court shall promulgate criteria and procedures for the selection
21 of neutrals on its panels. Each person serving as a neutral in an
22 alternative dispute resolution process should be qualified and

1 trained to serve as a neutral in the appropriate alternative
2 dispute resolution process. For this purpose, the court may use,
3 among others, magistrate judges who have been trained to serve
4 as neutrals in alternative dispute resolution processes,
5 professional neutrals from the private sector, and persons who
6 have been trained to serve as neutrals in alternative dispute
7 resolution processes. The United States Court of International
8 Trade shall issue rules relating to the disqualification of
9 neutrals.

10 A(j)

11 (1) Except as provided under subsections (f) and (g),
12 the United States Court of International Trade may allow
13 the referral to arbitration of any civil action pending
14 before it where the parties consent, except that referral to
15 arbitration may not be made ifC

16 A(A) the action is based on an alleged violation of
17 a right secured by the Constitution of the United
18 States; or

19 A(B) the amount in controversy, or the amount of
20 relief sought, is greater than \$150,000.

21 A(2) The court shall establish procedures to ensure
22 that consent to arbitration is freely and knowingly

1 obtained, and that no party or attorney is prejudiced for
2 refusing to participate in arbitration. For purposes of this
3 subsection, the court may presume that the amount in
4 controversy, or the amount of relief sought, is less than
5 \$150,000 unless counsel certifies that the amount in
6 controversy or amount of relief sought exceeds that
7 amount.

8 A(k)

9 (1) An arbitrator to whom an action is referred under
10 subsection (j) of this section shall have the power C

11 A(A) to conduct arbitration hearings;

12 A(B) to administer oaths and affirmations; and

13 A(C) to make awards.

14 A(2) The United States Court of International Trade
15 shall establish standards for the certification of arbitrators
16 and shall certify arbitrators to perform services in
17 accordance with such standards and this section. All
18 individuals serving as arbitrators in an alternative dispute
19 resolution program under this section shall be C

20 A(A) performing quasi-judicial functions; and

1 A(B) entitled to the immunities and protections
2 that the law affords to persons serving in such
3 capacity.

4 A(l) The rules of the United States Court of International
5 Trade relating to subpoenas shall apply to subpoenas for the
6 attendance of witnesses and the production of documentary
7 evidence at an arbitration hearing under this section.

8 A(m) An arbitration award made by an arbitrator under
9 this section, along with proof of service of such award on the
10 other party by the prevailing party or by the plaintiff, shall be
11 filed with the clerk of the United States Court of International
12 Trade promptly after the arbitration hearing is concluded. Such
13 award shall be entered as the judgment of the court after the
14 time has expired for requesting a trial de novo or judicial
15 determination. The judgment so entered shall be subject to the
16 same provisions of law and shall have the same effect as a
17 judgment of the court in a civil action, except that the judgment
18 shall not be subject to review in any other court by appeal or
19 otherwise. The court may provide, by rule, that the contents of
20 any arbitration award made under this section shall not be made
21 known to any judge who might be assigned to the case until the

1 court has entered final judgment in the action or the action has
2 otherwise terminated.

3 A(n) Within 30 days after the filing of an arbitration award
4 with the United States Court of International Trade under
5 subsection (m), any party may file a demand for a trial de novo
6 (in cases for which a trial de novo is provided by law) or a
7 judicial determination (in cases where no trial de novo is
8 provided). Upon demand for a trial de novo or judicial
9 determination, the action shall be restored to the docket of the
10 court and treated for all purposes as if it had not been referred
11 to arbitration. The court shall not admit at any trial de novo
12 evidence that there has been an arbitration proceeding, the
13 nature and amount of any award, or any other matter
14 concerning the conduct of the proceeding, unlessC

15 A(1) the evidence would otherwise be admissible in
16 the court under the Federal Rules of Evidence; or

17 A(2) the parties have otherwise stipulated.

18 A(o) The United States Court of International Trade shall,
19 subject to regulations approved by the Judicial Conference of
20 the United States, establish the amount of compensation, if any,
21 that each arbitrator or neutral shall receive for services rendered
22 in each case under this section. Under regulations prescribed by

1 the Director of the Administrative Office of the United States
2 Courts, the United States Court of International Trade may
3 reimburse arbitrators and any other neutrals for actual
4 transportation expenses incurred in the performance of duties
5 under this section. @.

6

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.c

2 The table of sections at the beginning of chapter 169 of title 28,
3 United States Code, is amended by adding at the end the following:
4 A2647. Alternate dispute resolution procedures.®.

5 **TITLE IVcAMENDMENTS TO**
6 **OTHER ACTS**

7
8 **SEC. 401. TRADING WITH THE ENEMY ACT.**

9
10 The Trading with the Enemy Act (50 U.S.C. App. 1 et seq.)
11 is amendedC

12 (1) in section 9(a) by striking “United States District Court for
13 the District of Columbia or in the district court of the United States
14 for the district in which the claimant resides, or, if a corporation
15 where it has its principal place of business” and inserting “United
16 States Court of International Trade”; and

17 (2) in section 17—

18 (A) in the heading, by inserting A; **THE UNITED**
19 **STATES COURT OF INTERNATIONAL TRADE®**
20 **AFTER ADISTRICT COURTS;®;**

21 (B) by striking AThe® and inserting A(a) IN
22 **GENERAL.—**Except as provided in subsection (b), the®; and
23

1 (C) by adding at the end the following:

2 A(b) UNITED STATES COURT OF
 3 INTERNATIONAL TRADE.—The United States Court
 4 of International Trade shall have jurisdiction to make and
 5 enter all such rules as to notice and otherwise, and all such
 6 orders and decrees, and to issue such process as may be
 7 necessary and proper in the premises to enforce the
 8 provisions of section 16(b) of this Act, with right of
 9 appeal as provided in section 1295 of title 28, United
 10 States Code.®.

11 **SEC. 402. EXPORT ADMINISTRATION ACT.**

12 (a) APPEAL. Section 10(j)(3) of the Export Administration
 13 Act of 1979 (50 U.S.C. App. 2409(j)(3)) is amended

14 (1) in the first sentence, by striking Aan appropriate
 15 United States district court® and inserting Athe United States
 16 Court of International Trade®; and

17 (2) in the second sentence, by striking AUnited States
 18 district courts® and inserting AUnited States Court of
 19 International Trade®.

20 (b) PROCEDURES RELATING TO CIVIL PENALTIES
 21 AND SANCTIONS. Section 13(c)(3) of the Export Administration
 22 Act of 1979 (50 U.S.C. App. 2412(c)(3)) is amended by striking

1 AUnited States Court of Appeals for the District of Columbia
2 Circuit@ and inserting AUnited States Court of International Trade@.

3 (c) TEMPORARY DENIAL ORDERS.cSection 13(d)(3) of
4 the Export Administration Act of 1979 (50 U.S.C. App. 2412(d)(3))
5 is amended by striking AUnited States Court of Appeals for the
6 District of Columbia Circuit@ and inserting AUnited States Court of
7 International Trade@.

8 **SEC. 403. SECTION 219 OF INA.**

9 Section 219(c)(1) of the Immigration and Nationality Act
10 (8 U.S.C. 1189(c)(1)), is amended by striking “United States Court of
11 Appeals for the District of Columbia Circuit” and inserting “United
12 States Court of International Trade”.

13 **SEC. 404. SECTION 2339B, TITLE 18, UNITED STATES**
14 **CODE.**

15 Section 2339B, title 18, United States Code, is amended –
16 (1) by striking “district court”, “the trial
17 court”, “a court”, “the court”, and “court” each time the words
18 appear, and inserting “the United States Court of International
19 Trade”; and

20 (2) by striking “the appellate court”, “a court of appeals” and
21 “the court of appeals” each time the words appear, and inserting “the
22 United States Court of Appeals for the Federal Circuit”.

1 **TITLE V REFERENCES AND**
2 **EFFECTIVE DATE**

3 **SEC. 501. REFERENCES.**

4 Except as otherwise expressly provided in this Act, any reference
5 in this Act, including any amendment made by this Act, to the "Bureau
6 of Customs and Border Protection" or the "Customs Service" shall be
7 considered to be a reference to the U.S. Customs and Border Protection
8 of the Department of Homeland Security.

9 **SEC. 502. EFFECTIVE DATE.**

10 This Act and the amendments made by this Act shall take effect on
11 the date that is 60 days after the date of enactment of this Act.