

ADMINISTRATIVE AND JUDICIAL CHALLENGES TO CUSTOMS DECISIONS

By David G. Forgue, Partner

Generally, Customs makes a number of important decisions with regard to every entry of merchandise. In the majority of cases, these decisions consist solely of accepting the information the importer provided. Thus, for legal purposes Customs is considered to have made a “decision” when it merely liquidates an entry “as entered,” i.e. with all of the information provided by the importer. However, in other situations, Customs will make decisions that modify some aspect of the entry or effect the importer’s operations in some other way. Almost all of these decisions may be challenged either administratively, or in court, depending on the nature of the decision. This chapter discusses some of the means of challenging these decisions.

As a preliminary matter, an important piece of vocabulary is “**liquidation.**” Liquidation is the point at which Customs makes its final determination of admissibility, as well as fixes the final appraisement of the value of the imported merchandise, the final classification and rate of duty for the imported merchandise, and the final amount of duty to be paid, as well as the amount of any additional fees that may be due.¹ In the normal course, liquidation takes place approximately 314 days after entry.² Liquidation is the date from which a number of deadlines discussed below are calculated.

¹ [19 U.S.C. § 1500](#)

² Under [19 U.S.C. § 1504](#), entries may liquidate in some instances by operation of law, rather than by Customs decision. These “deemed liquidations” take place at the rate of duty, value, quantity, and amount of duties declared by the importer at the time of entry. Deemed liquidations take place after a set period following events beyond the scope of this document.

A. Post-entry Adjustments

Technically, post-entry adjustments (PEA) are not challenges to Customs decisions. Instead, they are opportunities to correct information the importer provided on an entry before Customs liquidates the entry. Typically, if it is ascertained that a mistake has been made on an entry, an importer may file a PEA requesting that Customs allow the entry to be corrected. In fact, the statute specifically authorizes refunds to be made in this circumstance, when appropriate.³

PEAs are available for any corrections, whether made because of a mistake of law, a mistake of fact, a clerical error, or an inadvertency.⁴ In addition, Customs advises that a party requesting the adjustment use a specific form.⁵ Failure to utilize this form will cause Customs to treat the PEA submission as invalid. Given the current position that the correct document must be used for a PEA to be valid, it is wise to ensure that the form has not been changed by Customs. That being said, it should be noted that generally any information eligible for correction by PEA may be corrected by other means after liquidation. A PEA in most cases is simply a convenient way to make corrections immediately, instead of waiting ten months for liquidation.

With regard to timing, as of 2007 Customs has mandated that all PEAs be filed at least 20 working days prior to scheduled liquidation.⁶ Generally the Customs broker

³ [19 U.S.C. § 1520\(a\)\(4\)](#)

⁴ See [Submission Changes for Supplemental Information Letters and Post Entry Adjustments](#), July 1, 2003: http://www.cbp.gov/xp/cgov/trade/trade_programs/entry_summary/general_pea/supplemental_info_letters.xml (last viewed August 6, 2010)

⁵ See the Acrobat fillable version here: http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/entry_summary/general_pea/post_summary_form.ctt/post_entry_amendment_form.pdf

⁶ See [Post Entry Amendment Test Modification](#), October 23, 2007: http://www.cbp.gov/xp/cgov/trade/trade_programs/entry_summary/general_pea/pea_modification.xml (last viewed August 6, 2010)

would be able to provide the scheduled liquidation date. However, an importer may file a PEA as soon as the importer is aware of a correctable issue, assuming that it is more than 20 working days from scheduled liquidation. It should also be noted that if a PEA is filed and Customs disagrees with the claim, the entry will be placed on a two week liquidation cycle, so that the protest period could be dramatically altered.⁷ Finally, PEAs may be filed both where the error is to the detriment of the importer (i.e. under payments) and benefit the importer (i.e. refunds due).

B. Protests

The basic administrative challenge to decisions made by Customs is the **protest**. Protests are filed to contest decisions made on consumption entries, withdrawals from bonded warehouses, and withdrawals from foreign trade zones. Hereafter “entry” should be taken to mean all of these unless otherwise noted.

The law denominates seven specific Customs decisions that importers may protest. Claims made with regard to these decisions, whether by reason of mistake of law, mistake of fact, inadvertency, or clerical error may be protested. The specific decisions by Customs that may be protested are:

- (1) The appraised value of the 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;

⁷ [Id.](#)

- (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 subsection (d) of section 1520 of this title (discussed below).⁸

With the exception of the decision to deny entry or demand redelivery (number 4 above), refusal to pay a claim for drawback (number 6 above), and the refusal to reliquidate an entry under § 1520(d) (number 7 above), Customs decisions may not be protested until after liquidation.

For those decisions to be protested after liquidation, the protest **must** be filed within 180 days of liquidation. This is an absolute jurisdictional limitation that Customs and the courts apply strictly. For those decisions the protest of which does **not** require liquidation, the protest must be made within 180 days of the date of the decision being protested.⁹ Again, this is an absolute jurisdictional limitation. In situations in which a protest may be filed, neither Customs nor the courts will entertain claims that were required to be protested and were not properly protested. Therefore, it is important to keep in mind that Customs considers the date of filing for protests to be “the date on which a protest is received by the Customs officer with whom it is required to be filed.”¹⁰ There is no mailbox rule of any kind for protests. Acceptable delivery methods may vary. Some ports are willing to accept protests via facsimile with an original sent in the mail. It is advisable to check with local port personnel.

⁸ [19 U.S.C. § 1514\(a\)\(1\)-\(7\)](#)

⁹ [19 U.S.C. § 1514\(c\)\(3\)](#)

¹⁰ [19 C.F.R. § 174.12\(f\)](#)

Protests must be filed in writing, although the law specifically contemplates eventual electronic filing of protests. While Customs has created Customs Form 19, set forth below for protests, there is no legal requirement that this form be used.

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

Approved OMB No. 1651-0017
Exp. 09-30-2009

PROTEST

Pursuant to Sections 514 & 514(a), Tariff Act of 1930 as amended, 19 CFR Part 174 et. seq.

NOTE: If your protest is denied, in whole or in part, and you wish to CONTEST the denial, you may do so by bringing a civil action in the U.S. Court of International Trade within 180 days after the date of mailing of Notice of Denial. You may obtain further information concerning the institution of an action by writing the Clerk of U.S. Court of International Trade, One Federal Plaza, New York, NY 10007 (212-264-2800).

1. PROTEST NO. (Supplied by CBP)

2. DATE RECEIVED (CBP Use Only)

SECTION I - IMPORTER AND ENTRY IDENTIFICATION

3. PORT 4. IMPORTER NO. 5. ENTRY DETAILS

6. NAME AND ADDRESS OF IMPORTER OR OTHER PROTESTING PARTY	PORT CODE	FILER CODE	ENTRY NO.	CHECK DIGIT	DATE OF ENTRY	DATE OF LIQUIDATION

7. Is Accelerated Disposition being requested (19 CFR 174.22)?
 Yes No

SECTION II - DETAILED REASONS FOR PROTEST

8. With respect to each category of merchandise, set forth, separately, (1) each decision protested, (2) the claim of the protesting party, and (3) the factual material and legal arguments which are believed to support the protest. All such material and arguments should be specific. General statements of conclusions are not sufficient.

(Attach Additional Sheets if necessary.)

SECTION III - REQUEST FOR DISPOSITION IN ACCORDANCE WITH ACTION ON PREVIOUSLY FILED PROTEST

Protesting party may request disposition in accordance with the action taken on a previously filed protest that is the subject of a pending application for further review and is alleged to involve the same merchandise and the same issues. (See 19 CFR 174.13(a)(7).) To request such disposition, enter in Blocks 8 and 9 the protest number and date of receipt of such previously filed protest.

9. PROTEST NO. OF PREVIOUSLY FILED PROTEST	10. DATE OF RECEIPT
--	---------------------

SECTION IV - SIGNATURE AND MAILING INSTRUCTIONS

11. NAME AND ADDRESS OF PERSON TO WHOM ANY NOTICE OF APPROVAL OR DENIAL SHOULD BE SENT	12. NAME, ADDRESS, AND CBP IDENTIFICATION NUMBER TO WHICH REFUND SHOULD BE SENT	13. IF FILING AS ATTORNEY OR AGENT, TYPE OR PRINT YOUR NAME, ADDRESS AND IMPORTER NUMBER, IF ANY
14. SIGNATURE		DATE

X

(Optional) SECTION V - APPLICATION FOR FURTHER REVIEW (Fill in Item 1 above if this is a separate Application for Further Review.)

15. MARK BOX CORRESPONDING TO YOUR ANSWER TO EACH OF THE FOLLOWING QUESTIONS

YES NO

(A) Have you made prior request of a port director for a further review of the same claim with respect to the same substantially similar merchandise?

(B) Have you received a final adverse decision from the U.S. Court of International Trade on the same claim with respect to the same category of merchandise or do you have action involving such a claim pending before the U.S. Court of International Trade?

(C) Have you previously received an adverse administrative decision from the Commissioner of CBP or his designee or have you presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise?

16. JUSTIFICATION FOR FURTHER REVIEW UNDER THE CRITERIA IN 19 CFR 174.24 AND 174.25 (Include Applicable Rulings)

(Attach Additional Sheets if Necessary.)

SECTION VI - DECISION (CBP USE ONLY)

17. APPLICATION FOR FURTHER REVIEW Approved Denied for the reason checked: Untimely filed Does not meet criteria Other, namely

EXPLANATION:

18. PROTEST EXPLANATION: Approved Rejected as non-protestable Denied in full for the reason checked: Denied in part for the reason checked: Untimely filed See attached protest review decision Other, namely

EXPLANATION:

19. TITLE OF CBP OFFICER

20. SIGNATURE AND DATE

Previous Editions are Obsolete

CBP Form 19 (12/95)

Instead, any document that conveys the required information and otherwise fulfills the requirements of the law legally constitutes a protest.¹¹ In their barest form, documents have been considered “protests” where they convey enough information to Customs so that Customs would reasonably understand the filer’s intent and the relief sought. Nevertheless, it is still advisable to fully utilize Customs Form 19. In any case,

¹¹ See, e.g., [Mattel Inc. v. United States](#), 72 Cust. Ct. 257, 262 (1974)

the protest must always set forth each decision described above, each category of merchandise to which the protest applies, and the rationale for the objection to the Customs decision.¹² Thus, if an importer objected only to the valuation decisions made by Customs, and only as to a specific article on the shipment, it is necessary for the protest to state these limitations on the protest, as well as the objections to the Customs treatment. However, in providing this information, protests may be extremely lengthy and detailed with multiple exhibits, or can consist of a relatively few sentences.

A protest may be freely amended at any point before the end of the period in which the protest may have been filed.¹³ Therefore, the protest may be amended freely for 180 days after liquidation or the Customs decision that triggered the 180 day limit, unless a request for accelerated disposition has been filed.

As a general matter, only one protest may be filed for each entry. While there are a few specific instances in which more than one protest may be filed for an entry, they are relatively rare. The most common situation in which more than one protest may be filed for an entry is the situation in which a protesting party is protesting with regard to more than one category of merchandise. For instance, if protest is to be made for issues concerning pet food and auto parts on the same entry, a separate protest may be filed for each. However, a single protest addressing both issues can be filed. Another common reason that multiple protests are filed for a single entry is where more than one party files with respect to an entry.

¹² See, e.g., [Davies v. Arthur, 96 U.S. 148, 151](#) (1878), which indicated that Customs protests “must be so distinct and specific, as, when fairly construed, to show that the objection taken at the trial was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect, if it was one which could be obviated.”

¹³ 19 U.S.C. § 1514(c)(1)(D)

Moreover, while 19 U.S.C. § 1514(a) clearly enumerates the decisions that may be protested, there is a substantial amount of ambiguity with respect to protestable decisions. For instance, the courts have indicated¹⁴ that an importer can not properly protest collection of antidumping duties by Customs where the amounts collected were the amounts Customs was directed by the Department of Commerce to collect. The rationale is that the calculation of antidumping duties reflects a decision of the Commerce, rather than Customs. Thus, the Customs function in these cases was merely the ministerial task of collecting funds as directed by another agency. This rationale is applied to a number of laws administered by Customs at the border for other agencies, including the Environmental Protection Agency, the Fish and Wildlife Service, and other agencies.

Because it is likely that the other agencies have means by which to challenge decisions administered by Customs, it is may be important to correctly identify the agency with which to file a challenge to ensure that the agency's time limits for challenges do not expire while an importer mistakenly awaits a Customs decision on the challenge. This is a common problem in, for instance, the administration of the countervailing and antidumping duty laws, where the Department of Commerce has very specific and time-sensitive processes to clarify the status of imports under a countervailing or antidumping duty case. If these opportunities are missed, no protests to Customs will resurrect an importer's claims.

¹⁴ See, Mitsubishi Elecs. Am. v. United States, 44 F.3d 973 (Fed. Cir. 1994); see also, Sandvik Steel Co. v. United States, 164 F.3d 596 (Fed. Cir. 1998) (holding that the question of whether antidumping duties should be applied to an entry is not a "protestable decision.").

Under the protest statute, only specifically enumerated parties may file a protest.¹⁵

These parties are:

- (1) The importer or consignee shown on the entry documents;
- (2) The surety for the importer or consignee shown on the entry documents;
- (3) Any person paying a charge or exaction on the entry;
- (4) Any person seeking entry or delivery of the merchandise;
- (5) Any person filing a drawback claim for the merchandise;
- (6) Under the North American Free Trade Agreement, any exporter or producer who provided a NAFTA certificate of origin for the merchandise;
- (7) An authorized agent of any of the people mentioned above.

First, it should be noted that “person” as used in this list includes all forms of companies, partnerships, and other business entities. Second, the range of actors who may file a protest is broad, encompassing parties that may have different interests in the imported merchandise and the legal disposition of the import. As such, the law creates a second instance in which more than one protest may be filed with respect to an entry to ensure that each of these parties will have its rights protected. Thus, the different authorized parties under the statute may each file protests with regard to the entry, so that, for instance, both a surety and the producer may file protests with regard to a protest for which a NAFTA certificate of origin was presented.

In the normal course, protests must be decided within two years of the date of the protest.¹⁶ However, where a protest is based on the exclusion of merchandise from the

¹⁵ 19 U.S.C. § 1514(c)(2)

¹⁶ [19 U.S.C. § 1515\(a\)](#)

United States under the Customs laws,¹⁷ protests are to be decided within 30 days of filing.¹⁸ Furthermore, a party may request accelerated disposition of the protest. This is done by mailing to the appropriate Customs officer via certified or registered mail a request for accelerated disposition. This request is required by Customs to contain specific information,¹⁹ but no specific form is required. If the protest is not granted or denied within 30 days of mailing, it is deemed denied on the 30th day.²⁰ A request for accelerated disposition may be filed concurrently or any time after the original protest is filed. Generally, this would be done in a situation in which a party deems administrative review to be pro forma and seeks court review as quickly as possible.

Alternatively, there are several situations in which it is possible to request further review of a protest by a Customs official in lieu of review by the Port Director in the port in which the protest was filed.²¹ These situations are where the underlying decision:

- (1) Is alleged to be inconsistent with previous Customs decisions with respect to similar merchandise,
- (2) Is alleged to involve questions of law or fact that Customs has not yet ruled upon,
- (3) Involves legal or factual arguments that have not been previously presented to Customs but relate to a matter previously decided, or
- (4) Is alleged to involve questions Customs Headquarters has refused to consider in a request for internal advice.

¹⁷ If the exclusion is not made under the Customs laws, it is likely that the exclusion will not be a “protestable event” as discussed above, and therefore there will be no recourse via Customs protest.

¹⁸ [19 C.F.R. § 174.21\(b\)](#)

¹⁹ [See, 19 C.F.R. § 174.22\(b\)](#)

²⁰ [19 U.S.C. § 1515\(b\)](#)

²¹ [19 U.S.C. § 1515\(a\)](#)

Such a request is filed on Customs Form 19 (above), and must be filed during the same time frame available to file the underlying protest. The request must make clear the protest for which further review is requested, as well as set forth arguments in support of the protest. In addition, the request must contain allegations that the protesting party has not previously received an adverse administrative decision (or has a request currently pending) from the Commissioner of Customs for the same claim for the same category of merchandise, and that the protesting party has not received a final adverse decision (or have a claim pending) from the courts for the same claim for the same category of merchandise.²² These allegations are set forth in box 14 of Form 19. The Customs regulations indicate that the Port Director at the port at which the protest is filed will review the protest and forward it for further review if the Port Director believes the protest should be denied in whole or in part.²³ Finally, it should be noted that Customs has 30 days in which to decide whether to deny a request for further review.

In the event a request for further review is denied, the law allows a party to request that the Commissioner of Customs set the denial of the review aside within 60 days of the notice of denial.²⁴ Please keep in mind that this request is only to have the denial of further review set aside. Thus, even a successful request may well lead to a denial of the underlying claim.

Customs sometimes make mistakes in processing protests. Often this occurs where a port is processing voluminous protests from the same company that cover subtly different issues. These errors can be as difficult for the importer to discover as for Customs to avoid. As such, all denied protests should be reviewed promptly to ensure

²² [19 C.F.R. § 174.25\(b\)](#)

²³ [19 C.F.R. § 174.26](#)

²⁴ [19 U.S.C. § 1515\(c\)](#)

that they have not been denied incorrectly. Obviously, correction of an inadvertent denial is substantially less costly and time-consuming than seeking to correct the same error by means of litigation. The law allows a protest that is denied contrary to proper instructions, to be voided by Customs, or the protesting party can request such treatment from the Port Director within 90 days after denial.²⁵

C. Petitions for NAFTA Treatment

Importers may also petition Customs for NAFTA treatment for certain entries.²⁶ This petition may be filed within one year of importation, notwithstanding that no valid protest was filed. The NAFTA petition must be in writing and meet specific legal requirements. First, no NAFTA claim may have been made at the time of entry. Second, the article must qualify for NAFTA treatment. Third, the importer must declare that the article in question qualified under the NAFTA rules at the time it was imported. Fourth, the applicable NAFTA Certificates of Origin must be included with the petition. Finally, any other documents necessary to support the claim must be included with the petition.

The petition under § 1520(d) is a relatively narrow exception to the requirement that Customs decisions be protested. In the event that the NAFTA petition is denied, the denial may be protested.

D. Domestic petitions

Finally, United States law allows certain domestic interested parties to challenge the classification and rate of duty applied to specified classes or kinds of products.²⁷ “Interested parties” are defined as any of four major classes. First are manufacturers, producers, or wholesalers of the merchandise in the United States. Second are certified or

²⁵ [19 U.S.C. § 1515\(d\)](#)

²⁶ [19 U.S.C. § 1520\(d\)](#)

²⁷ [19 U.S.C. § 1516](#)

recognized unions or groups of workers which are representative of an industry engaged in the manufacture, production, or wholesaling of the merchandise in the United States. Third are trade or business associations in which a majority of the members are described above. Finally, in some situations producers of raw agricultural products that are used in imported processed foods are interested parties.²⁸

The law requires that upon written request, Customs will furnish an interested domestic party with the classification and rate of duty imposed on a designated class or kind of merchandise. If the interested party believes that the appraised value, classification, or rate of duty is not correct, it may file a petition with Customs seeking to change the appraised value, classification, or rate of duty. This petition must describe the merchandise at issue, set forth what it believes the correct appraised value, classification, or rate of duty to be, and the reasons the petitioner believes these are correct.²⁹

Once a petition has been properly filed, Customs will either agree with petitioner or disagree. If Customs agrees with the petition, the petitioner will be notified, and the determination will be published in the weekly Customs Bulletin. All merchandise of the class or kind described in the petition entered or withdrawn from warehouse for consumption more than thirty days after publication of the notice will be subject to the new valuation, classification, or rate of duty.

If Customs denies the domestic interested party's decision, Customs will notify the petitioner of this decision. If the petitioner wishes to contest this decision, the petitioner must file with Customs notice that it desires to contest the decision within thirty days of the Customs notification. Customs is then required to notify the domestic

²⁸ [19 U.S.C. § 1516\(a\)\(2\)-\(3\)](#)

²⁹ [19 U.S.C. § 1516\(a\)\(1\)](#)

party of the entries of such merchandise, and liquidations so that the domestic party could challenge the liquidation. These challenges are made to the United States Court of International Trade, although they are very rare.

E. Judicial Review

Judicial challenges to Customs decisions must generally be brought in the United States Court of International Trade (CIT). The CIT is a court of special jurisdiction that possess all of the powers in law and equity that district courts have.³⁰ The court may have no more than nine judges and by law no more than five of those judges may be of the same political party.³¹ The CIT is a court established under Article III of the United States Constitution.³² As is true with other Article III judges, judges at the CIT hold office during good behavior.³³

The judicial power of the CIT is generally exercised by individual judges presiding alone.³⁴ However, the law does allow for three-judge panels to be designated by the chief judge of the CIT either upon application of a party, or by the judge's own initiative where questions of the constitutionality of an act is at question, or where a case has broad implications for the customs laws.³⁵ These three-judge panels have been utilized quite sparingly in the CIT's history.³⁶ Although the CIT normally sits in New York, the CIT is empowered to sit anywhere within the jurisdiction of the United States,³⁷

³⁰ [28 U.S.C. § 1585](#)

³¹ [28 U.S.C. § 251](#)

³² Id.

³³ [28 U.S.C. § 252](#)

³⁴ [28 U.S.C. § 254](#)

³⁵ [28 U.S.C. § 255](#)

³⁶ See, e.g., United States Shoe Corp. v. United States, 19 CIT 288, 1995 Ct. Intl. Trade LEXIS 33 (1995), addressing the constitutionality of the Harbor Maintenance Tax.

³⁷ [28 U.S.C. § 256\(a\)](#)

and may, where allowed, preside over evidentiary hearings in foreign countries.³⁸ The Federal Rules of Evidence apply to matters before the CIT. The CIT has its own rules of procedure which are modeled on the Federal Rules of Civil Procedure. These rules empower the CIT to conduct jury trials in certain instances, although these are rare. The CIT reviews decisions by Customs *de novo*. The CIT's rules, as well as other information are available from the CIT's web page.

As mentioned above, the CIT is a court of special jurisdiction. This means that the prospective plaintiff must be able to establish jurisdiction under a specific jurisdictional provision for the court to exercise jurisdiction. The court's jurisdictional grant is found in 28 U.S.C. §1581 and 28 U.S.C. § 1582. It should be noted that seizures³⁹ and certain trademark issues are specifically outside the jurisdiction of the CIT. These are under the general District Courts in the district in which the issue arises.

28 U.S.C. § 1581 sets forth nine specific actions against the United States that the CIT is empowered to hear. First, the CIT has exclusive jurisdiction over civil actions to contest the denial of a protest.⁴⁰ Second, the CIT has exclusive jurisdiction over claims brought by domestic interested parties under 19 U.S.C. § 1516 where a domestic petition is denied.⁴¹ Third, for purposes of challenging Customs decisions, the CIT has exclusive jurisdiction to hear a challenge to a Customs ruling or decision where the importer can show that it will be irreparably harmed if such pre-importation review is not obtained.⁴²

³⁸ [28 U.S.C. § 256\(b\)](#)

³⁹ See [28 U.S.C. § 1356](#), granting jurisdiction to the district courts over seizures under any United States law not within maritime or admiralty law, unless the seizure action is initiated by the United States under [28 U.S.C. § 1582](#).

⁴⁰ [28 U.S.C. § 1581\(a\)](#)

⁴¹ [28 U.S.C. § 1581\(b\)](#)

⁴² [28 U.S.C. § 1581\(h\)](#). If a party is unable to show irreparable harm, a Customs ruling must generally be challenged by importing merchandise under the ruling and filing a protest after liquidation.

Finally, in the situation where no other provision of § 1581 may grant jurisdiction,⁴³ the CIT has jurisdiction over claims involving the revenue for imports or tonnage,⁴⁴ tariffs, duties, fees or other taxes on the importation of goods for reasons other than raising revenue,⁴⁵ embargoes and other quantitative restrictions not for public health or safety,⁴⁶ or administration or enforcement of matters covered in the preceding paragraphs and subsections of § 1581.⁴⁷

28 U.S.C. §1582 grants jurisdiction over three specific civil actions brought by the United States. The first is to recover certain civil penalties. The second is to recover on a bond related to the importation of merchandise required by law. The third is to recover customs duties. All of § 1582 relates to the ability of the United States to sue importers, rather than importers to challenge Customs decisions.

The United States Court of Appeals for the Federal Circuit (CAFC) is a United States Circuit Court under Article III of the United States Constitution. The CAFC, which sits in Washington, DC and occasionally elsewhere, is the appellate court for decisions from the CIT. The CAFC has a broad grant of jurisdiction, generally found at 28 U.S.C. § 1295. For purposes of challenging Customs decisions, there is one particularly important subsection. Namely, the CAFC is empowered to hear all appeals from final decisions of the CIT.⁴⁸ These appeals are taken of right.

⁴³ The courts have consistently found that this provision may be invoked only when there is no other provision under § 1581 that would or could have granted jurisdiction with respect to the importer's claim, or that provision would provide manifestly inadequate relief. See, e.g., [Fujitsu General America v. United States 283 F.3d 1364](#) (CAFC 2002).

⁴⁴ [28 U.S.C. § 1581\(i\)\(1\)](#)

⁴⁵ [28 U.S.C. § 1581\(i\)\(2\)](#)

⁴⁶ [28 U.S.C. § 1581\(i\)\(3\)](#)

⁴⁷ [28 U.S.C. § 1581\(i\)\(4\)](#)

⁴⁸ [28 U.S.C. § 1295\(a\)\(5\)](#)

Still related to imports, but not challenging Customs decisions, the CAFC is empowered to hear final determinations of the United States International Trade Commission relating to unfair practices in import trade.⁴⁹ The underlying claims are brought under 19 U.S.C. § 1337. Also, the CAFC is empowered to hear appeals of question of law with regard to certain decisions by the Secretary of Commerce with regard to the importation of instrument or apparatus.⁵⁰

In addition, the CAFC has specific jurisdiction to hear appropriate interlocutory appeals from the CIT,⁵¹ although these appeals shall not automatically stay cases before the CIT.⁵²

F. Conclusion

It is important to keep in mind that deadlines are critical in challenging Customs decisions. Because each of the deadlines discussed in this chapter is jurisdictional, the entirety of a claim can easily be lost by failing to challenge a decision on a timely basis. Furthermore, even where protests are timely filed, care must be taken to ensure that the importer has set forth the information Customs needs to decide in favor of the importer. This is true because an appeal to the CIT is often the sole means by which to address a denial of protest.

⁴⁹ [28 U.S.C. § 1295\(a\)\(6\)](#)

⁵⁰ [28 U.S.C. § 1295\(a\)\(7\)](#)

⁵¹ [28 U.S.C. § 1292\(d\)\(1\)](#)

⁵² [28 U.S.C. § 1292\(d\)\(3\)](#)