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EXPANDING THE JURISDICTION OF THE U.S. COURT OF INTERNATIONAL TRADE: PROPOSALS BY THE CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

*Patrick C. Reed**

I. INTRODUCTION

The Customs and International Trade Bar Association ("CITBA") has proposed several expansions in the jurisdiction of the U.S. Court of International Trade ("CIT"). CITBA, established in the 1910's as the Association of the Customs Bar, is the bar association of lawyers who regularly appear before the CIT and are engaged in the practice of law under U.S. tariff, customs, international trade, and related laws and regulations. CITBA's proposals on expanded jurisdiction of the CIT are set out in two reports adopted by CITBA's Board of Directors in 1994. In the belief that the ideas continue to represent valid proposals for expanding the court's jurisdiction, the reports formed the basis for a presentation at a plenary session of the Eleventh Judicial Conference of the CIT in December 1999, examining the role of the CIT in the twenty-first century.¹

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1. Readers are also referred to the explanation and summary of the CITBA proposals by Sidney N. Weiss, in 1994, at the Ninth USCIT Judicial Conference. *See* 161 F.R.D. 547, 590-92 (1994). Mr. Weiss was elected president of CITBA in 2000. Several of the ideas in this article also are discussed in PATRICK C. REED, *THE ROLE OF FEDERAL COURTS IN U.S. CUSTOMS & INTERNATIONAL TRADE LAW* 359-66 (1997).

This article presents the texts of the two CITBA reports (with added footnotes and minor editorial changes), together with the author's comments on the CITBA proposals prepared for the 1999 Judicial Conference. Part II of this article presents CITBA's first report, which identified several areas in which the CIT's lack of jurisdiction seems anomalous or illogical. Part III of this article presents CITBA's second report, which originally was issued shortly after the completion of the Uruguay Round of multilateral trade negotiations and which identified areas of judicial review related to the Uruguay Round Agreements that are, or potentially should be, assigned to the CIT. The author's comments are found in Part IV of the article.

II. CORRECTION OF JURISDICTIONAL ANOMALIES AND LIMITATIONS²

A. *Forfeiture Cases Arising from Customs Seizures*

The CIT should be given *in rem* jurisdiction to hear forfeiture cases arising from the Customs Service's seizure of goods. This heading is intended to encompass all civil seizures made by the Customs Service. It includes, without limitation; seizures predicated on failure to declare;³ fraudulent omissions from invoice or entry;⁴ counterfeit trademarks;⁵ importations involving fraud, gross negligence or negligence;⁶ introduction of merchandise contrary to law;⁷ currency violations;⁸ and export violations.⁹ Presently, these cases are within the jurisdic-

2. Part II is a slightly edited version of CITBA's June 1994 report entitled "Recommended Expansions in the Jurisdiction of the U.S. Court of International Trade." The report also noted that the CIT's jurisdiction had been expanded in certain respects in the North American Free Trade Implementation Act, Pub. L. No. 103-82, 107 Stat. 2057 (1993) (codified as amended in scattered sections of 19 U.S.C.).

3. See 19 U.S.C. § 1497 (1999).

4. See *id.* § 1499.

5. See *id.* § 1526.

6. See *id.* § 1592(c)(5)-(6) (authorizing seizure in specified circumstances).

7. See *id.* § 1595a(c) (specifying the categories of merchandise that may be seized).

8. See 31 U.S.C. § 5317 (1983 & Supp. 2000).

9. See 22 U.S.C. § 401 (1991); 50 U.S.C. app. § 2410(g) (1991). The list of statutes is not intended to be exhaustive. For example, the Customs Service sometimes has seized merchandise under the civil forfeiture authority set forth in 18 U.S.C. app. § 981 (2000) or other provisions of Title 18. It completely would defeat

tion of district courts under 28 U.S.C. § 1355.¹⁰ These cases are logically within the CIT's area of responsibility because they involve government action affecting imported goods and often raise issues closely related to typical customs issues currently heard by the CIT.

Moreover, in some instances, the existing jurisdictional allocation appears to be particularly anomalous because a case may begin as an "exclusion" or "request for redelivery," which is reviewable by the CIT, and turn into a "seizure," which is reviewable in a district court.¹¹ Although the statute authorizing seizure of merchandise imported "contrary to law" was amended in 1993¹² to clarify and limit the categories of merchandise that may be seized, it appears that the procedural setting of a case still can change from an administrative action, reviewable in the CIT, to a seizure case, adjudicated in a district court.

B. Lawsuits by Importers Contesting Certain Non-Protestable, Penalty-Type Actions

The CIT should be given jurisdiction over lawsuits by importers contesting government actions in penalty and liquidated damage cases which have been held to be non-protestable and outside the jurisdiction of the CIT. For example, in *Trayco, Inc. v. United States*,¹³ the Federal Circuit held that a lawsuit by an importer contesting the legality of imposing a mitigated penalty was within the jurisdiction of the district court under 28 U.S.C. § 1346(a)(2).¹⁴ This result is anomalous

the purpose of the proposed jurisdictional expansion if the Customs Service could oust the CIT of jurisdiction by invoking a non-enumerated provision, such as § 981, in support of a seizure of imported merchandise. The authority under § 981 is not limited to seizures by the Customs Service. However, while it is recommended that the CIT should have jurisdiction in all civil seizures by the Customs Service, this proposal is not intended to give the CIT jurisdiction over non-customs seizures. It should be recognized that a degree of uncertainty in the jurisdictional allocation seems almost inevitable if the responsibility for judicial review under a particular statutory provision is divided between the CIT and district courts.

10. 28 U.S.C. § 1355 (1993).

11. *See, e.g., R.J.F. Fabrics, Inc. v. United States*, 10 Ct. Int'l Trade 735, 651 F. Supp. 1431 (1986).

12. NAFTA Implementation Act, tit. VI, § 624, 107 Stat. 2057, 2187 (1993) (amending 19 U.S.C. § 1595a(c) (1999)).

13. 994 F.2d 832 (Fed. Cir. 1993).

14. *See id.* at 837. *See also* 28 U.S.C. § 1346(a)(2) (1993) (giving the district

because lawsuits by the government to enforce penalties are within the CIT's jurisdiction under section 1582,¹⁵ and the allocation of subject-matter jurisdiction among the courts logically should not depend on which party the plaintiff is.

C. Import Restrictions and Prohibitions Involving "Non-Customs" Issues

The CIT should be given expanded jurisdiction in civil actions against the United States to contest administrative actions which affect commercial import transactions by prohibiting or restricting the importation of particular kinds of merchandise, but which do not involve traditional customs law issues.

The existing statutes do not make it clear that the CIT should be the proper forum for reviewing administrative actions of this kind. Specifically, this proposal is intended to address an ambiguity in the statute identified in *K Mart Corp. v. Cartier, Inc.*¹⁶ In that case, the Supreme Court held that a lawsuit contesting the Customs Service's interpretation of the statutory prohibition on the importation of certain grey-market goods was within the jurisdiction of the district court.¹⁷ A key

court concurrent jurisdiction with the Court of Federal Claims where the claim does not exceed \$10,000). The jurisdiction of the Court of Federal Claims is based on 28 U.S.C. § 1491(a) (1994 & Supp. 2000) and has no limit on the amount in controversy. Consistent with *Trayco* is *Miami Free Zone Corp. v. United States*, 17 Ct. Int'l Trade 687, 826 F. Supp. 526 (1993) (dismissing similar lawsuit for lack of jurisdiction in the CIT). A similar jurisdictional confusion is illustrated by *Commodities Exp. Co. v. United States*, 888 F.2d 431, 435-46 (6th Cir. 1989), in which the Sixth Circuit remanded for further consideration the question of whether a lawsuit seeking to enjoin assessment of liquidated damages for alleged violations by a duty-free store was within the jurisdiction of the CIT or the district court. At a later stage in the same dispute, the Federal Circuit in *United States v. Commodities Exp. Co.*, 972 F.2d 1266, 1270-72 (Fed. Cir. 1992), ruled that the CIT had jurisdiction, in an action by the government, to enforce payment of the liquidated damages. Furthermore, in the *Carlingswitch* litigation of the early 1980s, the CIT was held to lack jurisdiction in an action contesting the refusal to refund a voluntary tender of duties in a penalty case; arguably the plaintiff could have sued in the Claims Court. See *Carlingswitch, Inc. v. United States*, 5 Ct. Int'l Trade 70, 560 F. Supp. 46, *aff'd per curiam*, 720 F.2d 656 (1983); *Carlingswitch, Inc. v. United States*, 85 Cust. Ct. 63, 500 F. Supp. 223 (1980), *aff'd*, 68 C.C.P.A. 49, C.A.D. 1264, 651 F.2d 768 (1981). See also *infra* notes 98-99 and accompanying text (discussing further developments in this area).

15. 28 U.S.C. § 1582 (1994).

16. 485 U.S. 176 (1988).

17. See *id.* at 182-83.

basis for the Court's decision was that 28 U.S.C. § 1581(i)(3)¹⁸ gives the CIT jurisdiction in cases arising from "embargoes" and "quantitative restrictions," but not "import prohibitions."¹⁹ Thus, section 1581(i)(3) should be amended to include "import prohibitions" in addition to "embargoes" and "quantitative restrictions."

With such an amendment, a principal type of case to be heard in the CIT would be administrative decisions on trade-related intellectual property issues, such as the agency action underlying the *K Mart* case. Giving the CIT jurisdiction in such cases is particularly appropriate because the Customs Service exercises independent decision-making authority on trade-related intellectual property matters²⁰ and, in general, lawsuits contesting Customs Service actions already are heard in the CIT.

In addition, this proposal would expand and clarify the CIT's jurisdiction to conduct judicial review in lawsuits to contest actions by administrative agencies, other than the Customs Service, which affect commercial import transactions. Some administrative actions of this type already are reviewed in the CIT, but, again, the existing statutes are unclear, and time-consuming litigation has been required to resolve jurisdictional issues.²¹ This proposed jurisdictional grant is intended to include review of import-related actions taken by such agen-

18. 28 U.S.C. § 1581(i)(3) (1994).

19. *K Mart Corp.*, 485 U.S. at 189. Presently, some lawsuits contesting "import prohibitions" might be heard in the CIT, based on § 1581(a) jurisdiction, in a lawsuit contesting the denial of a "protest" filed under 19 U.S.C. § 1514(a) (1999 & Supp. 2000). This is because a protest may include a challenge to "the legality of all orders and decisions entering into" the Customs Service's decision, and the "exclusion" of goods from entry is among the decisions that may be challenged in a protest. Thus, present law seems anomalous in that the CIT can review import prohibitions if they constitute "orders and decisions entering into" a protestable exclusion by the Customs Service. However, *K Mart* holds that the CIT does not have jurisdiction to review "import prohibitions" under § 1581(i). The inconsistency is intensified because present law generally allows the CIT to invoke its residual jurisdiction under § 1581(i) if the protest remedy is manifestly inadequate.

20. See 28 U.S.C. § 1582 (1994).

21. In *Conoco, Inc. v. U.S. Foreign-Trade Zones Bd.*, 18 F.3d 1581, 1590 (Fed. Cir. 1994), the CAFC, reversing the CIT, held that the CIT has jurisdiction under 28 U.S.C. § 1581(i) to review decisions by the Foreign-Trade Zones Board. The decision illustrates the uncertainty in current law, although it ultimately confirms that the CIT is the proper forum to conduct judicial review of regulatory measures which affect imports; even if the contested action is taken by an agency other than the Customs Service.

cies as the Food and Drug Administration ("FDA") (for example, "import alerts" prohibiting the importation of specified goods), the Department of Agriculture, the Federal Communications Commission ("FCC"), the Consumer Products Safety Commission ("CPSC"), and the Environmental Protection Agency ("EPA"). Giving the CIT jurisdiction in these cases is logical because, like the cases currently heard in the CIT, they involve government regulatory actions which directly affect imported goods and commercial import transactions.

D. Export-Control Cases

The CIT should be given jurisdiction in lawsuits seeking judicial review under the Export Administration Act ("EAA").²² In addition to the export-related seizures discussed in Part A, the EAA affords limited rights of judicial review on certain procedural issues,²³ the imposition of sanctions,²⁴ and denial of export privileges.²⁵ Presently, the § 2409(j) cases are heard in district courts and the § 2412 cases are heard in the D.C. Circuit. It would be logical to give the CIT jurisdiction because these lawsuits challenge government actions affecting international trade in goods.

E. Direct Right of Action in Anti-Dumping, Countervailing Duty, and Penalty Cases

The CIT should be given jurisdiction in cases based on a direct right of action for unfair trade practices (if it is deemed appropriate to provide direct rights of action in such cases, a question on which this article takes no position). Presently, such a right of action still is available under the Anti-Dumping Act of 1916.²⁶ In addition, at various times, bills have been introduced to create a new private right of action in anti-dumping, countervailing duty, and penalty cases.²⁷ It would be logical to give the CIT jurisdiction in such cases because (a)

22. Export Administration Act (EAA) of 1979, 50 U.S.C. app. §§ 2401-20 (1991 & Supp. 2000).

23. See *id.* app. § 2409(j).

24. See *id.* § 2412(c).

25. See *id.* § 2412(d)-(e) (denial of an export license is not subject to judicial review).

26. Anti-Dumping Act, 15 U.S.C. §§ 71-77 (1999).

27. See, e.g., REED, *supra* note 1, at 359.

the substantive laws are closely related to those presently heard in the CIT and (b) the cases would make use of the CIT's experience as a trial court.²⁸

F. Expanded Review of Customs Prospective Rulings

The CIT should be given expanded jurisdiction to review prospective customs rulings. Presently, under 28 U.S.C. § 1581(h),²⁹ the CIT has jurisdiction to review prospective rulings, but only if the plaintiff establishes that it "would be irreparably harmed unless given an opportunity to obtain judicial review prior to importation." The "irreparably harmed" standard has been very difficult, if not virtually impossible, for plaintiffs to satisfy.³⁰ It appears that the CIT has exercised jurisdiction under section 1581(h) on only a few occasions.³¹

28. At least one version of the bill to create a private right of action in dumping, countervailing, and penalty cases vested jurisdiction concurrently in the CIT and the District Court for the District of Columbia. If concurrent trial-level jurisdiction is created, it is suggested that appeals in these cases from both the CIT and the D.C. District Court should go to the Federal Circuit; thereby promoting greater uniformity in the law. *See id.* at 360.

29. "The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation." 28 U.S.C. § 1581(h) (1994).

30. *See, e.g., Thyssen Steel Co. v. United States*, 13 Ct. Int'l Trade 323, 712 F. Supp. 202, 204-06 (1989) (holding that irreparable harm was not shown where the importer could have adjusted its business operations to anticipate an adverse ruling, but did not do so).

31. *See, e.g., Ross Cosmetics Distrib. Ctrs., Inc. v. United States*, 17 Ct. Int'l Trade 966, 15 I.T.R.D. (BNA) 2050, 2050-51 (1993). The *Ross* court's opinion did not explain why the jurisdictional requirements were satisfied, and jurisdiction apparently was not contested. The case challenged a ruling on the issue of whether certain labels and packaging constituted a counterfeit use of trademarks. Since the goods would have been subject to seizure if imported, this fact may have been the basis for satisfying the required irreparable injury. *See also National Juice Prod. Ass'n v. United States*, 10 Ct. Int'l Trade 48, 628 F. Supp. 978, 984-87 (1986) (irreparable harm shown where detention of imported supplies would result in significant disruption of business operations, and complying with ruling would require millions of dollars of unrecoverable expenditures). The most recent case in which the CIT assumed jurisdiction under 28 U.S.C. § 1581(h) is *Heartland By-Products, Inc. v. United States*, 74 F. Supp. 2d 1324 (Ct. Int'l Trade 1999) (assuming jurisdiction based on showing that the contested ruling would force the plaintiff to close its business imminently), *reh'g denied*, 86 F. Supp. 2d 1339 (Ct. Int'l

Because the availability of section 1581(h) in practical terms is so limited, consideration should be given to adopting a lower threshold than "irreparably harmed." For example, allowing judicial review where it would be "commercially impracticable" to await importation might be workable.³²

G. New Areas of Judicial Review under International Trade Agreements

The CIT should be given jurisdiction over any new areas of judicial review in international trade that may be created under international trade agreements to which the United States is a party. In 1993, this idea was followed in the NAFTA Implementation Act to incorporate the new advance rulings on origin issues into existing Customs Service procedures (protests and domestic-interested-party petitions) which are subject to judicial review in the CIT. Although apparently no other analogous new areas of judicial review have been proposed, the CIT remains the logical forum for this type of case. This idea is developed further in Part III of this article.

III. JURISDICTION RELATED TO THE URUGUAY ROUND AGREEMENTS³³

This part summarizes the provisions in the agreements comprising the Final Act of the Uruguay Round of Multilateral Trade Negotiations,³⁴ which require members to provide judicial review of administrative determinations affecting international trade, and recommends several expansions in the jurisdiction of the U.S. CIT to implement new rights of judicial review resulting from the Uruguay Round agreements.³⁵

Trade 2000), *appeal docketed*, App. No. 00-1287 (Fed. Cir. 2000).

32. This standard was considered in 1980, but it ultimately was not adopted.

33. This part is a slightly edited version of CITBA's July 1994 report entitled "Recommended New Areas of USCIT Jurisdiction Resulting From The Uruguay Round Agreements."

34. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125 (1994), available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

35. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125 (1994) [hereinafter WTO Agreement], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

Part A, below, identifies several instances in which the CIT already has jurisdiction to conduct judicial review as required by a Uruguay Round Agreement.³⁶ The Uruguay Round Agreements discussed in this part of the report (such as GATT 1994,³⁷ the Agreement on Anti-Dumping Measures,³⁸ the Agreement on Subsidies and Countervailing Measures,³⁹ and the Agreement on Customs Valuation⁴⁰) cover areas in which the CIT already has extensive experience, and most of these agreements are new versions of earlier GATT Agreements.

Part B, below, identifies new areas of judicial review of administrative actions affecting international trade under the Uruguay Round Agreements. As explained below, these agreements bring a number of matters under the umbrella of the WTO, which oversees the operation of Uruguay Round Agreements. By virtue of the CIT's experience in areas covered by the earlier GATT Agreements, it is recommended that wherever a new cause of action for judicial review is created as a result of the Uruguay Round Agreements, jurisdiction to conduct the judicial review should be assigned to the CIT.

With respect to some of the recommended expansions of CIT jurisdiction, current law provides that the CIT would have

36. See *id.* at art. XVI, available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

37. The original text of the GATT is found at General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT 1947]. On Apr. 15, 1994, GATT 1947, as amended, was incorporated into the WTO as GATT 1994 in Annex 1A to the WTO Agreement [hereinafter GATT 1994], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

38. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS-RESULTS OF THE URUGUAY ROUND vol. 1, 33 I.L.M. 153 (1994) [hereinafter Anti-Dumping Measures], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

39. Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS-RESULTS OF THE URUGUAY ROUND vol. 1, 33 I.L.M. 229 (1994) [hereinafter Subsidies and Countervailing Measures], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

40. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS-RESULTS OF THE URUGUAY ROUND vol. 1, 33 I.L.M. 171 (1994) [hereinafter Customs Valuation], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

jurisdiction to review an administrative decision in some procedural contexts (for example, a decision forming the basis for a protestable exclusion or request for redelivery of imported goods), but the CIT would not have jurisdiction in other procedural contexts. This article recommends that the allocation of subject matter jurisdiction not depend on the procedural context in which the decision is made. Rather, the law should be clarified to provide the CIT with jurisdiction regardless of the procedural context.

A. Existing Areas of CIT Jurisdiction under the Uruguay Round Agreements

1. GATT 1994

GATT provides that "each contracting party shall maintain . . . judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement . . ." ⁴¹ This right of judicial review already exists in U.S. law. The CIT has jurisdiction, principally under 28 U.S.C. § 1581(a).

2. Agreement on Anti-Dumping Measures

Article 13 of the Agreement on Anti-Dumping Measures requires that

[e]ach Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question. ⁴²

This right of judicial review already exists in U.S. law, and the CIT has jurisdiction under 28 U.S.C. § 1581(c).

41. GATT 1994, *supra* note 37, at art. X, para. 3(b).

42. Anti-Dumping Measures, *supra* note 38, at art. 13.

3. Agreement on Customs Valuation

Article 11, paragraphs 1 and 2 of the Agreement on Customs Valuation provide that

[t]he legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of duty. An initial right of appeal without penalty may be made to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.⁴³

This provision appears to be a specific application of the general right of judicial review under GATT article X, paragraph 3(b).⁴⁴ The right of judicial review already exists in the United States, and the CIT has jurisdiction under 28 U.S.C. § 1581(a).

4. Agreement on Rules of Origin

Article 2(j) of the Agreement on Rules of Origin⁴⁵ requires members, during the transition period before harmonized rules of origin are adopted, to ensure that “any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral, or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination.”⁴⁶ Article 3(h) contains the same requirement after the transition period.⁴⁷ Although the Agreement on Rules of Origin is new, the provision for judicial review appears to be another specific application of GATT article X, paragraph 3(b). The right of judicial review already exists in U.S. law. The CIT has jurisdiction, principally under 28 U.S.C. § 1581(a).

43. Customs Valuation, *supra* note 40, at art. 11, paras. 1-2.

44. GATT 1994, *supra* note 37, at art. X, para. 3(b).

45. Agreement on Rules of Origin, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 209 (1994) [hereinafter Rules of Origin], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

46. *Id.* at art. 2(j).

47. *Id.* at art. 3(h).

5. Agreement on Subsidies and Countervailing Measures

Article 23 of the Agreement on Subsidies and Countervailing Measures requires that

[e]ach Member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations . . . Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question⁴⁸

This right of judicial review already exists in U.S. law, with the CIT having jurisdiction under 28 U.S.C. § 1581(c).

6. Agreement on Safeguards

The Agreement on Safeguards (*i.e.*, escape clause measures) does not provide expressly for judicial review.⁴⁹ Rather, it provides for “an investigation by the competent authorities,”⁵⁰ whose “determination . . . shall be made . . . on the basis of objective evidence”⁵¹ In current U.S. law, escape clause determinations are reviewable in the CIT, with jurisdiction based on 28 U.S.C. § 1581(i). However, the scope of review is extremely narrow because of the broad discretion accorded to the President under the statute.⁵² The newly formed Safeguards Agreement may create increased interest in escape clause proceedings; particularly since the agreement prohibits “voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.”⁵³ If Congress chooses to provide a less discretion-orient

48. Subsidies and Countervailing Measures, *supra* note 39, at art. 23.

49. Agreement on Safeguards, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1, 33 I.L.M. 283 (1994) [hereinafter Safeguards], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

50. *Id.* at art. 3, para. 1.

51. *Id.* at art. 4, para. 2(b).

52. *See, e.g.*, Maple Leaf Fish Co. v. United States, 762 F.2d 86, 89 (Fed. Cir. 1985).

53. Safeguards, *supra* note 49, at art. 11, para. 1(b).

ed administrative procedure, a broader right of judicial review in the CIT would be appropriate.

B. Recommended New Areas of USCIT Jurisdiction Resulting from the Uruguay Round Agreements

1. Agreement on Technical Barriers to Trade

Article 5.2.8 of the Agreement on Technical Barriers to Trade⁵⁴ provides that members, where conformity with technical regulations or standards is required, must ensure that “a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.”⁵⁵

This provision does not expressly require judicial review, but could be satisfied by providing for judicial review. In some instances affecting imported goods, the enforcement of a technical standard could result in a protestable exclusion or request for redelivery of goods. In these instances, the CIT might have jurisdiction under 28 U.S.C. § 1581(a) to review the denial of the protest. In addition, the CIT might have jurisdiction to review some technical standards under 28 U.S.C. § 1581(i). However, a number of technical barriers to trade apparently are excluded from section 1581(i) jurisdiction because they would constitute measures for the protection of the public health or safety. If the CIT does not have jurisdiction, the technical standard can be presumed to be subject to judicial review by virtue of the general presumption of reviewability in U.S. law, the Administrative Procedure Act,⁵⁶ and district courts’ federal question jurisdiction.⁵⁷

Thus, the CIT currently has jurisdiction to review technical barriers to trade in some cases, depending on the procedural context. But in other cases, either the CIT lacks jurisdiction or the jurisdictional allocation is unclear. Since administrative decisions concerning technical barriers to trade are now under

54. Agreement on Technical Barriers to Trade, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 117 (1994) [hereinafter Technical Barriers to Trade], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

55. *Id.* at art. 5.2.8.

56. Administrative Procedure Act, 5 U.S.C. §§ 551-59 (1996).

57. See 28 U.S.C. § 1331 (1994).

the WTO umbrella, it would be logical to amend the statute to make it clear that the CIT has jurisdiction to review all administrative decisions applying a technical standard to imported goods.

2. Agreement on Sanitary and Phytosanitary Measures

Annex C, paragraph 1(i) of the Agreement on Sanitary and Phytosanitary Measures⁵⁸ requires members to ensure that "a procedure exists to review complaints concerning the operation of . . . procedures [to check and ensure the fulfillment of sanitary and phytosanitary measures] and to take corrective action when a complaint is justified."⁵⁹ This requirement closely parallels the requirement in the Agreement on Technical Barriers to Trade,⁶⁰ and generally the same comments apply. It appears that virtually all sanitary and phytosanitary measures currently are excluded from the CIT's section 1581(i) jurisdiction because they relate to the public health or safety, although the CIT could review the same sanitary or phytosanitary measure if its application resulted in a protestable exclusion of imported goods.⁶¹

3. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁶²

Article 41, paragraph 4 of TRIPS provides that "[p]arties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions . . ."⁶³ This provision encompasses Article 51 (Border Measures) which authorizes, among other actions, the suspension of release

58. Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 69 (1994) [hereinafter Sanitary and Phytosanitary Measures], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

59. *Id.* Annex C, para. 1(i).

60. Technical Barriers to Trade, *supra* note 54.

61. See 28 U.S.C. § 1581 (1994).

62. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, WTO Agreement, Annex 1C, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 81 (1994) [hereinafter TRIPS], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

63. *Id.* at art. 41, para. 4.

from customs custody of allegedly infringing goods.⁶⁴ Similarly, article 59 provides that “subject to the right of . . . review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods”⁶⁵

Current U.S. law generally provides for judicial review of administrative actions in the intellectual property area. CITBA previously has recommended that the jurisdictional statutes should be amended to make it clear that the CIT has jurisdiction with respect to trade-related intellectual property matters. Currently, exclusions of infringing goods are reviewable by protest in the CIT, but seizures and intellectual-property-related “import prohibitions” are reviewable in district courts. The inclusion of TRIPS within the WTO umbrella reinforces the logic of CITBA’s earlier recommendation that the CIT should have expanded jurisdiction in this area.

In addition to the foregoing, Article 42 of the TRIPS agreement provides that “[m]embers shall make available to rights holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement.”⁶⁶ This provision requires the availability of a private cause of action not involving judicial review of agency action. It is suggested that lawsuits of this kind logically should remain in district courts.

4. Agreement on Government Procurement

Article XX, paragraph 2 of the Agreement on Government Procurement⁶⁷ requires each party to “provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.”⁶⁸ Under paragraph 6, “challenges shall be heard by a court or by an impartial and independent review

64. *See id.* at art. 51.

65. *Id.* at art. 59.

66. *Id.* at art. 42.

67. Agreement on Government Procurement, Apr. 15, 1994, WTO Agreement, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31 (1994), available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

68. *Id.* at art. XX, para. 2.

body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.”⁶⁹ Paragraph 6 also provides that a “review body which is not a court shall either be subject to judicial review or shall have [specified quasi-judicial] procedures”⁷⁰

The challenge procedure is a new requirement under the Government Procurement Agreement. Although equivalents to judicial review are permitted, in the context of U.S. law, the most logical option would be to provide for judicial review. It is recommended that this new cause of action should be assigned to the CIT, particularly since the CIT already has jurisdiction in government procurement under the limited and rarely used jurisdictional grant in 28 U.S.C. § 1581(e), relating to origin determinations for purposes of procurement.

5. General Agreement on Trade in Services (GATS)

Article VI, paragraph 2(a) of GATS provides that

[e]ach Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that they do in fact provide for an objective and impartial review.⁷¹

Current U.S. law might satisfy this obligation since judicial review probably is available under the Administrative Procedure Act, the presumption of reviewability, and district courts' federal question jurisdiction. Since trade in services has been brought under the WTO umbrella, it is recommended that an express cause of action to review alleged violations of the GATS should be created. The CIT should be allocated jurisdic-

69. *Id.* at para. 6.

70. *Id.*

71. General Agreement on Trade in Services, Apr. 15, 1994, WTO Agreement, Annex 1B, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31 (1994), 33 I.L.M. 1168 (1994), available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

tion over administrative determinations involving trade in services which relate to the provision of services across borders and to the implementation of U.S. obligations under the GATS. This step would move the CIT's jurisdiction into a new area, since until now it has dealt only with trade in goods.

6. Agreement on Textiles and Clothing

The Agreement on Textiles and Clothing does not expressly provide for judicial review, but it is implied by several provisions.

Article 5(1) requires members to "establish the necessary legal provisions and/or administrative procedures to take action against . . . circumvention."⁷² These procedures could include judicial review. Current U.S. law treats circumvention under the customs penalty statutes, and the CIT would have jurisdiction under section 1582. In addition, as CITBA previously has recommended, the CIT also should be given jurisdiction in customs seizures and in importer-initiated lawsuits arising from penalty proceedings.

Article 6 provides for a "transitional safeguard mechanism,"⁷³ which is similar to, but separate from, general safeguards proceedings discussed above. Again, if Congress chooses to provide a less discretion-oriented administrative procedure than currently exists, it would be appropriate to assign judicial review to the CIT.

Article 7 incorporates by reference "GATT 1994 rules and disciplines"⁷⁴ in several areas, including "facilitation of customs . . . formalities."⁷⁵ Arguably, this provision encompasses the requirement of judicial review in customs matters under GATT article X(3)(b).⁷⁶

72. Agreement on Textiles and Clothing, Apr. 15, 1994, WTO Agreement, art. 5.1, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31 (1994), available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

73. *Id.* at art. 6.

74. *Id.* at art. 7.

75. *Id.*

76. GATT 1994, *supra* note 37, art. 10, para. 3(b).

7. Agreement on Agriculture

Article 5 of the Agreement on Agriculture creates a Special Safeguards Procedure ("SSP") for certain agricultural products.⁷⁷ The SSP differs from the usual safeguards procedure in that the imposition of additional duties can occur automatically if imports reach specified "trigger levels" in volume or specified "trigger prices."⁷⁸ Since the import relief is intended to be automatic, the Agreement could warrant enactment of a right of judicial review in the nature of mandamus if the specified conditions are met but additional duties are not imposed. Judicial review also is warranted if additional duties are imposed, to determine whether the specified conditions existed. Jurisdiction to conduct judicial review in such cases should be assigned to the CIT because the administrative inaction would relate to import duties.

8. Judicial Review in Section 301 Cases (Encompassing Several Uruguay Round Agreements)

Section 301 of the Trade Act of 1974, as amended, requires the Office of the U.S. Trade Representative ("USTR") to initiate an investigation where the contested foreign action or practice constitutes a violation of an international trade agreement.⁷⁹ Currently, it appears that a party filing a section 301 petition does not have a cause of action for judicial review if the USTR does not initiate the requested investigation. But, where the statute makes an investigation mandatory (*i.e.*, for violations of an international trade agreement),⁸⁰ consideration should be given to providing for judicial review to determine whether the USTR has failed to initiate in circumstances in which initiation is mandatory. In addition, consideration should be given to providing for judicial review of the factual and legal conclusions underlying a determination by the USTR (for example, factual and legal conclusions concerning whether

77. Agreement on Agriculture, Apr. 15, 1994, WTO Agreement, art. 5.1, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31 (1994) [hereinafter Agriculture], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

78. *Id.*

79. Trade Act of 1974 §§ 301-10, 19 U.S.C. §§ 2411-20 (1994 & Supp. IV 1998).

80. *See id.*

a particular foreign program is prohibited a subsidy). However, this recommendation would not encompass judicial review of discretionary elements in the USTR's action, such as the appropriate remedial action to be taken.

Because of its experience involving international trade agreements, the CIT would be the logical forum to exercise jurisdiction in such cases.

The cause of action would apply to violations of many, if not all, of the Uruguay Round Agreements. Among the most important potential violations would be a subsidy prohibited by the Agreement on Subsidies and Countervailing Measures,⁸¹ a trade-related investment requirement inconsistent with the Agreement on Trade-Related Investment Measures,⁸² domestic support measures for agricultural products failing to qualify as exempt from trade remedies because they do not conform fully to the provisions of that agreement,⁸³ and failure to implement the requirements of the TRIPS agreement for domestic protection of intellectual property rights.⁸⁴

9. Trade-Related Freedom-of-Information Judicial Review (Encompassing Several Uruguay Round Agreements)

Many of the Uruguay Round Agreements require members to notify all other members, through the WTO Secretariat, of the member's laws and regulations affecting international trade.⁸⁵

The private bar has a keen interest in having such documentation freely obtainable on behalf of its clients. Consideration should be given to the establishment of a special procedure, in the nature of a Freedom of Information Act request, that would allow a private party to request an appropriate U.S. agency (such as the Commerce Department or USTR) to provide copies of documents containing reports to the WTO by

81. Subsidies and Countervailing Measures, *supra* note 39, at art. 3.

82. Agreement on Trade-Related Investment Measures, Apr. 15, 1994, WTO Agreement, art. 2 & Annex, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994) [hereinafter TRIMS], available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

83. See Agriculture, *supra* note 77, at art. 13.

84. TRIPS, *supra* note 62.

85. See, e.g., Technical Barriers to Trade, *supra* note 54, at art. 5.6.2; TRIMS, *supra* note 82, at art. 5; Rules of Origin, *supra* note 45, at art. 5.1; Subsidies and Countervailing Measures, *supra* note 39, at art. 25.

foreign countries on their measures regulating international trade. To the extent such a procedure is created, denials of such requests should be subject to judicial review, and the CIT should exercise jurisdiction because of its experience involving international trade agreements.

10. Agreement on Import Licensing

The Agreement on Import Licensing provides that "[t]he rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner."⁸⁶ Although this obligation does not expressly require judicial review, the availability of judicial review would help to assure its fulfillment. To the extent U.S. law provides for import licenses or analogous measures, the administrative determination should be subject to judicial review in the CIT.

IV. COMMENTS ON THE CITBA PROPOSALS

The guiding principle behind CITBA's recommendations in Parts II and III was to continue the role for the CIT envisaged in the Customs Courts Act of 1980.⁸⁷ Namely, to have a comprehensive system of judicial review of agency actions under the federal customs and international trade laws in a court with specialized expertise and jurisdiction—the CIT.⁸⁸ The system of judicial review under federal laws that regulated and taxed imports of merchandise into the United States was transformed between 1970 and 1980.⁸⁹ Until 1970, that system was limited to the Customs Court's judicial review in customs and tariff cases. By 1980, the role of the judiciary was transformed and the CIT came to exercise judicial review un-

86. Agreement on Import Licensing Procedures, Apr. 15, 1994, WTO Agreement, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31 (1994), available at http://www.wto.org/english/docs_e/legal_e/final_e.htm (last visited Jan. 10, 2001).

87. Pub. L. No. 96-417, 94 Stat. 1727 (1980) (codified principally in scattered sections of 28 U.S.C., notably including 28 U.S.C. §§ 251-57, 1581-85, and 2631-46).

88. See H.R. REP. NO. 96-1235, at 20 (1980) ("a comprehensive system of civil actions arising from import transactions, utilizing the specialized expertise of the United States Customs Court and the United States Court of Customs and Patent Appeals."). See also S. REP. NO. 96-466, at 3 (1979) ("a comprehensive system of judicial review of civil actions arising from import transactions").

89. See REED, *supra* note 1, at 125-77.

der a mixed system of import regulation consisting of customs and tariff laws, anti-dumping and countervailing duty laws, and other international trade laws.

As the culmination of this process, the 1980 Act

(i) transferred jurisdiction for judicial review under several [customs and international trade] laws from the district courts to the CIT, (ii) attempted to resolve the inadequate jurisdictional demarcation between district courts and the former Customs Court, and (iii) gave the CIT the same full powers in law and equity as district courts exercised.⁹⁰

These purposes of the 1980 Act also should be understood in connection with steps previously taken in the Customs Procedural Reform and Simplification Act of 1978,⁹¹ which transferred jurisdiction in customs penalty cases under section 592 of the Tariff Act⁹² from district courts to the Customs Court, and the Trade Agreements Act of 1979,⁹³ which made judicial review in the CIT (at the time, still called the Customs Court) an integral part of the procedures under the newly amended anti-dumping and countervailing duty statute.

CITBA's reports, published as Parts II and III of this article, addressed two general subjects. The first CITBA report identified several areas in which it appeared, with hindsight, that the goals of the 1980 Act had not been fully achieved.⁹⁴ There still were certain areas of law in which the demarcation between the jurisdiction of district courts and the jurisdiction of the CIT was not set forth with sufficient clarity. Further, there appeared to be certain areas of law which, although assigned to district courts, appeared more logically to be related to the matters heard by the CIT. As a result, the existing allocation of jurisdiction appeared to fall short of the goal of giving the CIT "comprehensive" jurisdiction in cases arising from international trade transactions.

90. *Id.* at 177.

91. Pub. L. No. 95-410, § 110, 92 Stat. 888, 896 (1978) (amending Tariff Act of 1930, § 592(e), 19 U.S.C. § 1592(e) (1994)).

92. 19 U.S.C. § 1592 (1994).

93. Pub. L. No. 96-39, § 1001, 93 Stat. 144, 300-306 (1979) (adding Tariff Act of 1930, § 516A, 19 U.S.C. § 1516a (1994)).

94. *See supra* Part II.

The proposals in the second CITBA report develop the idea of giving the CIT jurisdiction in new areas of judicial review created under the international trade agreements adopted in the Uruguay Round.⁹⁵ These proposals parallel the expansion of the jurisdiction of the CIT in accordance with the shift in the system of U.S. import laws away from a system based almost entirely on customs laws and toward a mixed system consisting of customs laws, anti-dumping and countervailing duty laws, and other international trade laws. The Uruguay Round agreements expanded the scope of the international trade regime administered by the WTO. Several of the new WTO Agreements include provisions requiring or allowing procedures for judicial review under the internal laws of WTO members. Consistent with the goal of having a "comprehensive" system of judicial review in matters relating to international trade, CITBA recommended that new causes of action under the WTO Agreements logically should be assigned to the CIT.⁹⁶

An amplification of Part II is warranted under the heading of "certain non-protestable penalty-type actions."⁹⁷ The report focused in particular on the jurisdictional confusion resulting from the *Trayco* decision, in which an importer was allowed to bring a lawsuit in district court contesting the imposition of a customs penalty.⁹⁸ In retrospect, *Trayco* apparently has not been followed by similar lawsuits presenting the same jurisdictional anomaly. Consequently, perhaps *Trayco* does not represent as serious a jurisdictional problem as had been thought when CITBA's report was drafted. Nevertheless, even without a reappearance of the specific issue in *Trayco*, the CIT acknowledges that there remains a "very unsettled legal landscape with regard to jurisdiction over suits by importers to recover or avoid Customs duties or penalties"⁹⁹

95. See *supra* Part III.

96. See *id.*

97. See *supra* notes 13-15 and accompanying text.

98. *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed. Cir. 1993). See *supra* note 13 and accompanying text.

99. *Bridalane Fashions, Inc. v. United States*, 32 F. Supp. 2d 466 (Ct. Int'l Trade 1998) (assuming jurisdiction under § 1581(i) in importer-initiated action concerning requirements for reduction of penalties through voluntary disclosure). See also *Pentax Corp. v. Robinson*, 125 F.3d 1457 (Fed. Cir. 1997) (declining to rule on jurisdictional issue), *amended on reh'g, in part*, 135 F.3d 760 (Fed. Cir. 1998); *Tikal Distrib. Corp. v. United States*, 970 F. Supp. 1056 (Ct. Int'l Trade

Another serious jurisdictional issue in customs penalty cases is that the CIT's jurisdiction under 28 U.S.C. § 1582 is limited to certain enumerated civil penalties under the customs laws.¹⁰⁰ In fact, the customs laws include several other civil penalties or fines that are not enumerated in section 1582 and, consequently, would be within the jurisdiction of district courts. Among the fines and penalties under the customs laws whose recovery is not within the CIT's jurisdiction are: fines for violations of the Foreign-Trade Zones Act;¹⁰¹ penalties for intentionally destroying, defacing, or removing country-of-origin labels;¹⁰² penalties for violating NAFTA record-keeping requirements;¹⁰³ penalties for violating general record-keeping requirements;¹⁰⁴ and penalties for aiding and abetting the importation of goods in violation of an American trademark.¹⁰⁵ Logically, all civil actions commenced by the United States to recover civil penalties under the customs laws should be heard in the CIT.

V. CONCLUSION

As the U.S. customs and international trade laws evolve, there is a continuing need to evaluate the CIT's jurisdiction to assure that it remains an effective forum for conducting judicial review of agency action under those laws. This need is particularly important because the decrease in the rates of customs duties results in a corresponding decrease in traditional customs litigation—the adjudication of disputes over the assessment of customs duties.

In recognition of the importance of these issues, Chief Judge Gregory W. Carman, of the CIT, established an Advisory Committee on Jurisdiction in June 2000 to report to the court on possible expansions of its jurisdiction. The CITBA proposals

1997) (dismissing action seeking recovery of voluntarily tendered duties for lack of jurisdiction and failure to state a claim on which relief may be granted).

100. 28 U.S.C. § 1582 (1994) (giving the CIT jurisdiction "to recover a civil penalty under §§ 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930 [19 U.S.C. §§ 1592, 1593a, 1641(b)(6), 1641(d)(2)(A), 1671c(i)(2), or 1673c(i)(2)] . . .").

101. *See* 19 U.S.C. § 81s (1994).

102. *See id.* § 1304(l).

103. *See id.* § 1508(e).

104. *See id.* § 1509(g).

105. *See id.* § 1526(f) (Supp. IV 1999).

discussed above provide a foundation for the Advisory Committee's consideration. The evaluation of potential expansions of the CIT's jurisdiction also can take into account four general principles: *jurisdictional clarity* (avoidance of confusion over the intended allocation of jurisdiction); *judicial expertise* (similarity to matters currently heard by CIT judges); *jurisdictional comprehensiveness* (the creation of a jurisdictional system in the CIT encompassing the field of customs and international trade law, as suggested in Part IV above); and *judicial efficiency* (using the judicial resources of the CIT to reduce the caseload in district courts by transferring cases to the CIT). How these general principles and the jurisdictional proposals made by CITBA and others are applied and shaped in future legislative initiatives will help determine the path the CIT will take in the twenty-first century.