A Race to the Courthouse?: Jurisdiction over Customs Admissibility Decisions

Erik Smithweiss*

I. INTRODUCTION

United States Customs and Border Protection (Customs) is the principal federal agency charged with determining the admissibility of merchandise offered for importation into the United States. Customs officers may admit merchandise, exclude merchandise from entry (or demand return of merchandise to customs custody), or seize merchandise for violations of law, depending upon the controlling statutes and regulations.[1] Persons adversely affected by Customs' exclusion or seizure of merchandise—or Customs' failure to exclude or seize merchandise—may desire judicial review of the agency's actions. Several recent decisions from the United States Court of International Trade (CIT) and federal district courts highlight the jurisdictional issues litigants face when challenging Customs decisions and selecting the appropriate forum to obtain judicial relief.[2] This Article reviews these

* © 2013 Erik Smithweiss. Partner, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt, LLP. The views expressed in this Article are strictly those of the author and do not necessarily reflect the views of GDLSK LLP.

1. *See, e.g.*, 19 C.F.R. (2012).

2. *See* Ancient Coin Collectors Guild v. U.S. Customs & Border Prot., 801 F. Supp. 2d 383, 387, 398 (D. Md. 2011) (holding that the district court, not the CIT, possessed jurisdiction over the plaintiff's challenge to a seizure of certain coins), *aff'd*, 698 F.3d 171 (4th Cir. 2012); PRP Trading Corp. v. United States, No. 12-00103, slip op. at *6 (Ct. Int'l Trade Oct. 2, 2012)

recent decisions in the context of the historical development of case law construing the competing jurisdictional grants of the district courts and the CIT as they relate to Customs decisions concerning admissibility, exclusions, and seizures. This Article suggests that seizure of goods should not automatically preclude CIT jurisdiction to review Customs' underlying admissibility decision in appropriate cases.

II. CUSTOMS' AUTHORITY TO DETAIN, EXCLUDE, OR SEIZE IMPORTED MERCHANDISE

Customs' authority to examine, detain, exclude, and/or seize imported merchandise is derived from myriad statutes and corresponding regulations. Consequently, the determination of which court possesses jurisdiction to review Customs actions can often depend upon the statutory and/or regulatory authority under which Customs has acted and whether Customs' actions resulted in an "exclusion" of the goods from entry as opposed to a "seizure" of the goods.

Customs' authority to exclude imported merchandise from entry is derived primarily from 19 U.S.C. § 1499(a). This section provides that imported merchandise

> shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws . . . which . . . the Customs Service is authorized to enforce) until the merchandise has been . . . found to comply with the requirements of the laws of the United States.[3]

Inherent in the statutory language is Customs' authority to withhold delivery of, i.e., "detain," merchandise until Customs has determined that the merchandise is in compliance with applicable laws and to deny admission of merchandise found not to be in compliance with applicable laws.

Statutes establishing admissibility requirements on imported merchandise are too numerous to list. Review of several of the most

---

(holding that the CIT lacked jurisdiction over a deemed exclusion where Customs seized the goods); CBB Grp., Inc. v. United States, 783 F. Supp. 2d 1248, 1251 (Ct. Int'l Trade 2011) (holding that the CIT, not the district court, had jurisdiction over a deemed exclusion notwithstanding subsequent seizure of goods); Funai Elec. Co. v. United States, 645 F. Supp. 2d 1351, 1358 (Ct. Int'l Trade 2009) (holding that the CIT lacked jurisdiction over a patent owner's action to compel Customs to exclude merchandise from entry).

3. 19 U.S.C. § 1499(a) (2006); *see also* 19 C.F.R. § 151.1 ("The port director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for compliance with the Customs laws and any other laws enforced by the Customs Service."); *id.* § 141.113 (mandating the port director to demand return to Customs custody of merchandise found "not entitled to admission into the commerce of the United States").

commonly enforced statutes and implementing regulations indicates that Customs often has the discretion to deny admission of noncompliant goods rather than to seize the merchandise.[4] Customs regulations governing the importation and admissibility of many, but not all, types of merchandise subject to restrictions or prohibitions are set forth in part 12 of title 19 in the Code of Federal Regulations.[5] With respect to admissibility decisions under these or similar statutes and regulations, Customs can make a decision to exclude merchandise, regardless of whether or not Customs subsequently decides to seize the merchandise.[6] Some statutes and their corresponding regulations would appear to mandate seizure.[7] Other statutes, such as 19 U.S.C. § 1337(d), expressly provide only for an exclusion from entry.[8]

III. JURISDICTIONAL FRAMEWORK

There is a strong presumption in favor of judicial review for agency decisions.[9] When a party aggrieved by an agency decision involving admissibility seeks judicial review, the threshold question presented in many situations is whether jurisdiction lies in a federal district court or in the CIT.[10]

---

4. *See, e.g.*, 15 U.S.C. § 1124 (2006) ("[N]o article of imported merchandise which shall copy or simulate . . . a trademark registered in accordance with the provisions of this chapter . . . shall be admitted to entry at any customhouse of the United States . . . ."); *id.* § 1125(b) (stating that goods marked or labeled in contravention of § 1125(a) "shall not be . . . admitted to entry at any customhouse [and] [t]he owner, importer or consignee of goods refused entry . . . may have any recourse by protest or appeal that is given under the customs revenue laws"); 19 U.S.C. § 1526(b) (stating that merchandise bearing a registered trademark imported without the consent of the owner of such trademark "shall be subject to seizure and forfeiture"); *id.* § 1595a(c)(2)(A) ("[M]erchandise *may be* seized and forfeited if . . . its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute . . . ." (emphasis added)); 19 C.F.R. § 133.22(b) (stating that imported articles "copying or simulating a recorded mark . . . shall be denied entry" and detained).

5. *See, e.g.*, 19 C.F.R. § 12.74 (setting forth procedures for admissibility determinations, detentions, and exclusion from entry for nonroad engines not meeting certain requirements of the Environmental Protection Agency).

6. *See* 19 U.S.C. § 1595a(c)(2).

7. *See, e.g.*, *id.* § 1526(e) ("[M]erchandise bearing a counterfeit mark . . . imported into the United States . . . shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws."); *id.* § 1595a(c)(1) ("The merchandise shall be seized and forfeited if it . . . is stolen, smuggled, or clandestinely imported or introduced . . . .").

8. *Id.* § 1337(d) (requiring the Secretary of Treasury—delegated to Customs—to refuse entry of merchandise covered by an International Trade Commission (Commission) exclusion order); *see also* 19 C.F.R. § 12.39(b).

9. Reilly v. Office of Pers. Mgmt., 571 F.3d 1372, 1377 (Fed. Cir. 2009).

10. An additional consideration closely tied to the jurisdictional analysis is what, if any, administrative remedy must be exhausted prior to invoking jurisdiction in district court or the

The federal "district courts . . . have original jurisdiction [over] all civil actions arising under the [United States] Constitution, [U.S.] laws, or treaties of the United States,"[11] as well as any civil action arising under federal patent, trademark, and copyright laws.[12] With respect to Customs seizures, two statutes confer jurisdiction on the federal district courts. Under 28 U.S.C. § 1355(a), the district courts "have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the [CIT] under [28 U.S.C.§ 1582]."[13] Under 28 U.S.C. § 1356, the district courts "have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction, except matters within the jurisdiction of the [CIT] under [§] 1582."[14]

The CIT's jurisdiction is provided in 28 U.S.C. §§ 1581-1584. Civil actions against the United States are delineated in § 1581.[15] Three subsections thereof are relevant to admissibility decisions. Under subsection (a), the CIT has exclusive jurisdiction to contest the denial of a protest under 19 U.S.C. § 1515.[16] A protest is an administrative procedure authorized in 19 U.S.C. § 1514 that enables an importer to obtain agency review of specified Customs decisions; a Customs decision to exclude merchandise or demand its redelivery may be contested before the agency in accordance with § 1514(a)(4).[17] If Customs denies the protest, an importer may commence a civil action under § 1581 to contest denial of the protest. Thus, a Customs decision

---

CIT. *See, e.g.*, Union Pac. R.R. Co. v. U.S. Dep't of Homeland Sec., No. 8:08CV336, 2010 U.S. Dist. LEXIS 61934, at *18 (D. Neb. June 11, 2010) ("A failure to resort to the statutory scheme for forfeiture cannot deprive the court of jurisdiction to hear a constitutional challenge [to a Customs seizure]." (citation omitted)); 28 U.S.C. § 2637 (2006) (setting forth the requirements for exhaustion of an administrative remedy for certain civil actions commenced under § 1581).

11. 28 U.S.C. § 1331.

12. *Id.* § 1338(a).

13. *Id.* § 1355(a).

14. *Id.* § 1356.

15. Civil actions commenced *by* the United States are provided for in 28 U.S.C. § 1582. Such actions are limited to recovery of civil penalties under specified statutes, recovery on a customs bond, and recovery of customs duties. *Id.* § 1582.

16. *Id.* § 1581(a).

17. 19 U.S.C. § 1514(a)(4) (2006) ("[D]ecisions . . . including the legality of all orders and findings entering into the same, as to . . . the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws . . . shall be final . . . unless a protest is filed in accordance with [§ 1514], or unless a civil action contesting the denial of a protest . . . is commenced in the [CIT].").

resulting in exclusion of merchandise is reviewable in the CIT pursuant to § 1514(a)(4) and § 1581(a).

The jurisdictional provisions of § 1514(a) and § 1581(a) are augmented by the statutory detention procedures set forth in 19 U.S.C. § 1499(c). These procedures provide for a deemed "exclusion" of merchandise in the event Customs fails to make an admissibility determination within thirty days of the goods being presented for examination.[18] The deemed exclusion can then be subject to protest under § 1514(a)(4). Unless acted upon sooner, a protest against a decision to exclude merchandise shall be treated as denied within thirty days after it was filed for purposes of jurisdiction under § 1581.[19] Section 1499(c) also provides that detained merchandise may be seized if otherwise provided by law.

There are two other jurisdictional provisions of § 1581 that relate to Customs decisions regarding admissibility. Section 1581(h) grants the CIT exclusive jurisdiction to review, prior to importation, a Customs ruling or a refusal to issue a ruling relating to, inter alia, "restricted merchandise, entry requirements . . . 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."[20]

Lastly, the CIT also has so-called "residual" jurisdiction over civil actions commenced against the United States and its agencies or officers arising under any U.S. law providing for

(1) revenue from imports or tonnage;
(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.[21]

It is well settled that jurisdiction under § 1581(i) may only be invoked if jurisdiction is not available under § 1581(a)-(h).[22] A Customs

18. *Id.* § 1499(c)(5)(A).
19. *Id.* § 1499(c)(5)(B).
20. 28 U.S.C. § 1581(h). Restricted merchandise is merchandise with specific admissibility requirements that might be subject to exclusion from entry.
21. *Id.* § 1581(i).
22. *See* Int'l Custom Prods., Inc. v. United States, 467 F.3d 1324, 1327 (Fed. Cir. 2006) (stating that jurisdiction under § 1581(i) may not be invoked if jurisdiction is also available under

decision to exclude merchandise would normally be reviewable under § 1581(a) following denial of a protest under § 1514(a)(4). Section 1581(i) might provide judicial review of other Customs decisions concerning admissibility, provided those decisions arose out of a law providing for "embargoes or other quantitative restrictions" or laws providing for "administration and enforcement" of embargoes or quantitative restrictions.[23]

Much of the litigation concerning jurisdiction to review Customs decisions relating to admissibility of merchandise has centered upon several issues: (1) whether a Customs decision resulting in an "exclusion" that could be subject to a protest exists, (2) whether a "seizure" of merchandise for which jurisdiction might lie in a district court has occurred, and (3) whether the Customs decision to exclude, or not to exclude, the merchandise arises out of a law providing for embargoes or other quantitative restrictions. The tension is primarily between the CIT's exclusive jurisdiction to review protests against exclusion of merchandise under § 1581(a) and the federal district court's jurisdiction over seizures under § 1356.

IV. 28 U.S.C. § 1581(a)—EXCLUSIONS VERSUS SEIZURES

A long line of CIT cases has developed evaluating the breadth of its jurisdiction under 28 U.S.C. § 1581(a) regarding Customs admissibility decisions. Two trends can be distilled from these cases. First, there seems to be a consensus that the CIT can only have jurisdiction under § 1581(a) if there has been an exclusion of the goods or demand for redelivery[24] that comes within the protestable decisions delineated in 19 U.S.C. § 1514(a). Second, there seems to be some divergence as to whether the CIT can assert or retain jurisdiction where a protestable exclusion is followed by a seizure of the goods. Some decisions have found jurisdiction to review a denied protest notwithstanding subsequent seizure of the goods, whereas other decisions have found jurisdiction in

---

§ 1581(a)); Miller & Co. v. United States, 824 F.2d 961, 963 (Fed. Cir. 1987) ("Section 1581(i) jurisdiction may not be invoked when jurisdiction under another subsection of § 1581 is or could have been available, unless the remedy provided under that other subsection would be manifestly inadequate." (citations omitted)).

23. *See* 28 U.S.C. § 1581(i)(3)-(4).

24. For example, in *Lois Jeans & Jackets, U.S.A., Inc. v. United States*, the CIT had jurisdiction under § 1581(a) where the plaintiff had protested a demand to redeliver goods to Customs' custody. 5 Ct. Int'l Trade 238 (1983). The underlying inadmissibility decision was based on alleged trademark infringement. *Id.* at 239.

the CIT lacking. The recent decisions in *PRP Trading Corp. v. United States*[25] and *CBB Group, Inc. v. United States*[26] illustrate this divergence.

A. Defining an Exclusion

An exclusion of merchandise must take place in order for protest jurisdiction to lie under 28 U.S.C. § 1581(a).[27] The CIT has generally applied the following distinction between protestable exclusions and nonprotestable seizures:

> [E]xclusion differs from that of seizure [in that the] effect . . . is to deny entry into the customs territory of the United States. The importer may then dispose of the goods as he chooses. In the case of seizure, however, the government often takes control of the merchandise, and may ultimately institute forfeiture proceedings.[28]

In *R.J.F. Fabrics, Inc. v. United States*, the "[e]ntry of the shipment of [the] plaintiff's textiles was denied by Customs" approximately five weeks prior to seizure.[29] The CIT found that denial of entry was a protestable exclusion, even though Customs had clearly taken control of the goods.[30]

In *International Maven, Inc. v. McCauley*, Customs seized the goods and issued a seizure notice four days after entry.[31] The CIT found that Customs had never excluded the goods prior to seizure and thus found no protestable exclusion within the jurisdiction of the CIT.[32] In *International Maven*, the CIT listed four factors in concluding that plaintiff had not protested an exclusion: (1) the protest itself challenged a seizure, (2) the plaintiff received notice of seizure, (3) the government had control over the merchandise, and (4) upon notice, the plaintiff was

---

25. No. 12-00103, slip op. at *5-6 (Ct. Int'l Trade Oct. 2, 2012) (holding that the CIT lacked jurisdiction over a deemed exclusion where Customs seized the goods).

26. 783 F. Supp. 2d 1248, 1250-51 (Ct. Int'l Trade 2011) (holding that the CIT could exercise jurisdiction over a deemed exclusion even though Customs seized the goods).

27. *See* H&H Wholesale Servs., Inc. v. United States, 30 Ct. Int'l Trade 689, 692-93 (2006) ("[A]n exclusion must take place before a plaintiff may protest [and] if only a seizure took place, the court has no jurisdiction." (citation omitted)); *see also* Tempco Mktg. v. United States, 21 Ct. Int'l Trade 191, 193 (1997); Int'l Maven, Inc. v. McCauley, 12 Ct. Int'l Trade 55, 58-59 (1988).

28. R.J.F. Fabrics, Inc. v. United States, 10 Ct. Int'l Trade 735, 738 (1986); *see also H&H Wholesale*, 30 Ct. Int'l Trade at 692.

29. 10 Ct. Int'l Trade at 737.

30. *Id.* at 739-40.

31. 12 Ct. Int'l Trade at 55.

32. *Id.* at 58, 60.

required to choose between immediate forfeiture proceedings or a petition for relief.[33]

H&H Wholesale Services, Inc. v. United States provides a thorough analysis of the CIT's jurisdictional basis to review exclusions under § 1581(a). In *H&H Wholesale*, goods were held for a customs exam within days of entry and were subsequently seized by Customs less than thirty days later.[34] Seizure was based on alleged trademark violations.[35] The CIT first considered whether there was a "deemed exclusion" under 19 U.S.C. § 1499(c).[36] Under § 1499(c), goods are deemed excluded from entry if Customs fails to make a determination of admissibility within thirty days of the goods being presented for examination.[37] As the goods had been seized less than thirty days after examination, the CIT found there was no deemed exclusion of the goods.[38] The CIT then considered whether there was an express exclusion of the goods.[39] The CIT applied the four factor test from *International Maven* to conclude there was no exclusion of the goods.[40]

Lastly, *H&H Wholesale* considered the plaintiff's argument that Customs' failure to provide the plaintiff with a notice of detention, as required under § 1499(c)(2), could provide a basis for residual jurisdiction under § 1581(i)(4).[41] The CIT noted that § 1581(i)(4) extends residual jurisdiction solely to administration and enforcement of matters listed in § 1581 (e.g., a protest denied under 19 U.S.C. § 1515) and that failure to provide notice of detention under § 1499(c) did not relate to the denial of protest of an exclusion.[42]

---

33. *Id.* at 58.

34. 30 Ct. Int'l Trade 689, 689-90 (2006).

35. *Id.* at 690.

36. *Id.* at 693.

37. 19 U.S.C. § 1499(c)(5)(A) (2006) (mandating that Customs' failure to make an admissibility determination within thirty days "shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 1514(a)(4)").

38. *H&H Wholesale*, 30 Ct. Int'l Trade at 693.

39. *Id.* ("Absent a deemed exclusion, [the plaintiff] must show that an express exclusion of the merchandise occurred." (footnote omitted)).

40. *Id.* at 694-95; *see also* CDCOM (U.S.A.) Int'l, Inc. v. United States, 21 Ct. Int'l Trade 435, 438-39 (1997) (holding that there was no deemed exclusion where goods were seized within thirty days of examination, and there was no actual exclusion under the *International Maven* factors).

41. 30 Ct. Int'l Trade at 700.

42. *Id.* at 700-01. The effect of failure to provide a notice of detention required by § 1499(c)(2) could be addressed in a forfeiture proceeding in district court. *See* United States v. Thirty-Six (36) 300CC on Road Scooters Model WF300-SP, No. 2:11-CV-130, 2012 U.S. Dist. LEXIS 139509, at *18-20 (S.D. Ohio Sept. 27, 2012) (finding Customs' failure to provide notice of detention did not void subsequent seizure).

B. Does Seizure Preclude CIT Jurisdiction of an Exclusion Protest?

When there is no express or deemed exclusion preceding a seizure, the CIT's jurisdictional analysis under 28 U.S.C. § 1581(a) is simple. However, where there is a deemed or express exclusion followed by a seizure, the question arises as to whether 28 U.S.C. § 1356 prevents the CIT from entertaining jurisdiction over a denied protest of such exclusion.[43] In *R.J.F. Fabrics* and later in *Milin Industries, Inc. v. United States*[44], the CIT found that Customs had excluded the merchandise prior to seizure.[45] In both cases, the goods were eventually seized for alleged violations of textile quotas, and in both cases the plaintiffs filed protests against the exclusion of the goods subsequent to the intervening seizure notices.[46] In both cases, the government argued that the district courts had jurisdiction over the seizures under § 1356 and that, therefore, the CIT actions must be dismissed.[47]

The CIT rejected the government's position and retained jurisdiction in both cases.[48] In *R.J.F. Fabrics*, the CIT stated:

> There is no doubt that plaintiff could have protested Customs' action after denial of entry on July 2 and July 11. The Court is unwilling, therefore, to adopt a rule that would divest the Court of International Trade of jurisdiction simply because plaintiff filed its protest after Customs chose, on August 15, to formally seize the subject goods.
>
> . . . .
>
> . . . Plaintiff in the instant case has pursued the appropriate administrative procedure and properly seeks a declaratory judgment concerning country of origin of its merchandise excluded from entry by Customs.[49]

The CIT noted that the underlying admissibility determination involved the "country of origin of merchandise excluded for possible violations of quota requirements," which was the type of matter that would properly be raised before the court.[50] The CIT went on to state, "There is no reason that plaintiff's action must be dismissed simply

---

43. *See* R.J.F. Fabrics, Inc. v. United States, 10 Ct. Int'l Trade 735 (1986); Milin Indus., Inc. v. United States, 12 Ct. Int'l Trade 658 (1988).

44. *Milin Indus.*, 12 Ct. Int'l Trade at 658.

45. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 736, 743; *Milin Indus.*, 12 Ct. Int'l Trade at 659, 664.

46. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 737; *Milin Indus.*, 12 Ct. Int'l Trade at 659.

47. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 737-38; *Milin Indus.*, 12 Ct. Int'l Trade at 661.

48. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 743; *Milin Indus.*, 12 Ct. Int'l Trade at 659.

49. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 738-40.

50. *Id.* at 741.

because civil forfeiture or criminal proceedings may at some unspecified point be brought in the district court."[51]

In *Milin Industries*, the CIT followed *R.J.F. Fabrics* and declined to dismiss the action.[52] *Milin Industries* relied on the fact that the underlying admissibility determination depended upon the tariff classification of the seized merchandise under the Tariff Schedules of the United States, in contrast to a seizure based on trademark violations as in *International Maven*.[53]

In *Tempco Marketing v. United States*[54] and *Genii Trading Co. v. United States*,[55] two cases decided on the same day by the same judge, the CIT found it lacked jurisdiction notwithstanding the deemed exclusion of the merchandise and the filing of protests challenging the deemed exclusions.[56] In both cases, goods were detained for possible trademark violations and were deemed excluded within thirty days afterwards.[57] Subsequent to the deemed exclusions, but prior to filing a protest, plaintiffs received notices of seizure.[58] In both cases the court distinguished *R.J.F. Fabrics* and *Milin Industries* based on the fact that the underlying admissibility decision involved substantive trademark law, not customs laws.[59] It is against this background that the CIT decided the more recent cases of *PRP Trading* and *CBB Group*.[60]

CBB Group concerned goods detained as possible piratical copies of a registered copyright.[61] The goods were imported in early September 2010, and Customs did not make an admissibility determination within

---

51. *Id.* (citations omitted).
52. *Milin Indus.*, 12 Ct. Int'l Trade at 663.
53. *Id.*
54. 21 Ct. Int'l Trade 191 (1997).
55. 21 Ct. Int'l Trade 195 (1997).
56. *Tempco Mktg.*, 21 Ct. Int'l Trade at 193-94; *Genii Trading*, 21 Ct. Int'l Trade at 195-97.
57. *Tempco Mktg.*, 21 Ct. Int'l Trade at 192-93; *Genii Trading*, 21 Ct. Int'l Trade at 195.
58. *Tempco Mktg.*, 21 Ct. Int'l Trade at 192; *Genii Trading*, 21 Ct. Int'l Trade at 195.
59. *Tempco Mktg.*, 21 Ct. Int'l Trade at 193 ("There is one final consideration tipping the scales in favor of finding no jurisdiction. The underlying substantive issue in this case is one involving trademark law."); *Genii Trading*, 21 Ct. Int'l Trade at 197. In *Luxury International, Inc. v. United States*, the CIT had jurisdiction to review an exclusion protest relating to goods detained for suspected copyright infringement. 23 Ct. Int'l Trade 694 (1999). Although the admissibility determination was based on substantive copyright law, Customs had not seized the goods pending completion of an administrative determination under 19 C.F.R. § 133.44. *Luxury Int'l*, 23 Ct. Int'l Trade at 697-98. The crux of the plaintiff's protest was that Customs should release the goods for technical noncompliance with the regulations. *Id.* at 697-99. Because there had not yet been a seizure, the issue of district court jurisdiction under 28 U.S.C. § 1356 did not arise.
60. *See* PRP Trading Corp. v. United States, No. 12-00103 (Ct. Int'l Trade Oct. 2, 2012); CBB Grp., Inc. v. United States, 783 F. Supp. 2d 1248 (Ct. Int'l Trade 2011).
61. *CBB Grp.*, 783 F. Supp. 2d at 1249.

thirty days of examination.[62] As a consequence, the CIT found that the goods were deemed excluded on the thirtieth day, in accordance with 19 U.S.C. § 1499(c)(5).[63] The plaintiff filed a protest, which was denied thirty days later.[64] On the following day, December 21, the plaintiff filed a summons in the CIT.[65] On January 11, 2011, Customs sent the plaintiff a notice of seizure stating the goods had been seized on December 21 as being clearly piratical.[66]

The government moved to dismiss for failure to state a claim for relief.[67] Although the defendant agreed that the CIT had jurisdiction to review the deemed exclusion of the plaintiff's goods,[68] the defendant asserted that once Customs seized the goods, only the district court had jurisdiction to review a seizure under 28 U.S.C. § 1356.[69] The government argued, therefore, that the CIT could not grant any relief in the plaintiff's action to contest the deemed exclusion of the goods.[70]

The CIT found it had jurisdiction under 28 U.S.C. § 1581(a) because the plaintiff had protested a deemed exclusion.[71] The CIT framed the issue as follows: Did Customs' issuance of a seizure notice more than sixty days after examination of the goods, and after the CIT action had been commenced, preclude the court from retaining jurisdiction and granting plaintiff any relief?[72] Relying in part on 28 U.S.C. § 2640(a),[73] the CIT concluded that once jurisdiction attached, the CIT, and not the agency, had the authority to make the final determination of admissibility.[74] The CIT also examined § 1499(c) and its legislative history and found no indication that Congress intended to preclude the CIT from granting relief once an action had been commenced before it.[75] In particular, the CIT focused on a statement from the legislative history to § 1499(c) stating, "[T]he burden of proof shall be on the Customs Service to show . . . good cause as to why an admissibility decision had not been made *prior to the time the importer*

62. *Id.* at 1249, 1251.
63. *Id.* at 1251.
64. *Id.* at 1249, 1251.
65. *Id.* at 1249.
66. *Id.* at 1250 & n.1.
67. *Id.* at 1249.
68. *Id.* at 1251.
69. *Id.* at 1252.
70. *Id.* at 1249.
71. *Id.* at 1251.
72. *Id.* at 1253.
73. Under 28 U.S.C. § 2640(a), the CIT makes its determinations based on the record developed before the court.
74. *CBB Grp.*, 783 F. Supp. 2d at 1254.
75. *Id.*

commenced suit."[76] The CIT further noted that 28 U.S.C. § 1356 is strictly jurisdictional and does not address the relief available in an action brought in the CIT.[77] Finally, the CIT distinguished *Tempco Marketing* and *Genii Trading* on the grounds that in those cases CIT jurisdiction had not attached prior to the agency's seizure of the plaintiffs' goods.[78]

The decision in *CBB Group* is consistent with prior CIT decisions. In both *R.J.F. Fabrics* and *Milin Industries*, Customs had issued seizure notices after exclusions but prior to the plaintiffs' protests.[79] In both cases, the CIT found it properly had jurisdiction over the exclusions notwithstanding 28 U.S.C. § 1356 and Customs' intervening seizure notices.[80] Stated otherwise, the CIT rejected the notion that the seizures trumped the exclusion protests.[81]

Though not expressly stated therein, these cases clearly recognize the simple proposition that behind nearly every Customs seizure of merchandise is an admissibility determination made by Customs.[82] To be sure, a forfeiture proceeding in district court can involve legal issues beyond the threshold admissibility determination made by Customs.[83] However, if a plaintiff can properly bring that admissibility determination before the CIT, then the CIT should be empowered to decide the admissibility issue notwithstanding the potential that a forfeiture proceeding *might* be initiated in a federal district court, or even is pending.[84] The notion that the CIT is powerless to grant meaningful

---

76. *Id.* (internal quotation marks omitted) (citing H.R. REP. NO. 103-361, at 112 (1993)).

77. *Id.* at 1255.

78. *Id.* at 1256.

79. R.J.F. Fabrics, Inc. v. United States, 10 Ct. Int'l Trade 735, 736-37 (1986); Milin Indus., Inc. v. United States, 12 Ct. Int'l Trade 658, 660 (1988).

80. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 737-38, 743; *Milin Indus.*, 12 Ct. Int'l Trade at 659-60, 664.

81. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 743; *Milin Indus.*, 12 Ct. Int'l Trade at 664.

82. In this author's experience, Customs seizures of merchandise are effected primarily under 19 U.S.C. § 1595a(c) and § 1526(e). Under both statutes, the grounds for seizure all involve findings that the merchandise is not admissible. *See* 19 U.S.C. § 1595a(c)(4) (2006) (stating that goods imported in violation of laws governing classification or value cannot be seized if there is no issue of admissibility, except in limited situations authorized under 19 U.S.C. § 1592); CDCOM (U.S.A.) Int'l, Inc. v. United States, 21 Ct. Int'l Trade 435, 438-39 (1997) ("Customs made an admissibility determination within the thirty-day statutory period . . . declaring both shipments of the subject merchandise 'seized.'").

83. *See, e.g.*, United States v. An Antique Platter of Gold, 184 F.3d 131, 133, 139 (2d Cir. 1999) (addressing the claimant's contention that seizure of merchandise violated the Eighth Amendment of the Constitution), *aff'd*, 698 F.3d 171 (4th Cir. 2012).

84. *See* Fuji Photo Film Co. v. Benun, 463 F.3d 1252, 1255 (Fed. Cir. 2006) ("[W]hile [the defendant] has expressed frustration at the possibility that it will have to confront similar issues in both the Court of International Trade and the district court, . . . such duplication of litigation efforts is simply not relevant to the jurisdictional inquiry." (citation omitted)). Additional support can be derived from *Shah Bros. v. United States*, wherein the CIT stated:

relief to the plaintiff simply because Customs issued a seizure notice would seem incorrect.

R.J.F. Fabrics illustrates this point. The CIT noted therein, "Plaintiff . . . has pursued the appropriate administrative procedure and properly seeks a *declaratory judgment* concerning the country of origin of its merchandise excluded from entry by Customs."[85] A declaratory judgment that goods are admissible can provide meaningful relief, even if not accompanied by a direct order to Customs to release the goods.[86] A CIT decision might be given preclusive effect on the issue of admissibility in a subsequent forfeiture proceeding and thereby effectively resolve the forfeiture litigation.[87] A CIT admissibility decision might, as a practical matter, also resolve the admissibility of prospective importations. When evaluated in this light, a CIT decision rendered while goods are sitting in a Customs seizure warehouse is not materially different than a CIT decision rendered in a case brought under 28 U.S.C. § 1581(h) by an importer that is contesting a Customs advanced ruling that goods are inadmissible.[88] The only real difference is that in the latter the goods are held in a warehouse overseas, whereas in the former they are held in a Customs seizure warehouse.

Several decisions have suggested that the amendments made by the Customs Modernization Act (Mod Act)[89] to 19 U.S.C. § 1499(c) and its legislative history, in particular § 1499(c)(4), preclude the CIT from asserting jurisdiction over an exclusion protest when Customs has issued an intervening seizure notice. Section 1499(c)(4) states, "If otherwise provided by law, detained merchandise may be seized and forfeited."[90] Citing this provision, the CIT in *CDCOM (U.S.A.) International, Inc. v.*

"[A]ny actual Customs 'decision' underlying such seizure, forfeiture, or criminal prosecution is protestable. The fact that Customs, seizes and forfeits the classified imports neither deprives a plaintiff of the protest procedure under 19 U.S.C. § 1514(a)(2) nor divests this Court of jurisdiction over the protest pursuant to 28 U.S.C. § 1581(a)." 751 F. Supp. 2d 1303, 1314-15 (Ct. Int'l Trade 2010) (footnote omitted). While *Shah Bros.* may be distinguishable on several grounds, it does lend support to the notion that, in appropriate cases, the CIT can review a denied protest notwithstanding a pending seizure case.

85. *R.J.F. Fabrics*, 10 Ct. Int'l Trade at 740 (emphasis added).

86. A direct order to Customs to release goods would probably be unnecessary because continued custody of the plaintiff's merchandise may contravene the Fifth Amendment absent independent grounds for seizure.

87. *See, e.g.*, United States v. Contents of Two Shipping Containers, 380 F. Supp. 2d 409, 413-14 (D.N.J. 2003) (applying issue preclusion in forfeiture proceeding).

88. Prospective importers can seek preimportation judicial review of a Customs admissibility ruling pursuant to 28 U.S.C. § 1581(h). *See* Ross Cosmetics Distrib. Ctrs., Inc. v. United States, 17 Ct. Int'l Trade 814 (1993).

89. H.R. REP. NO. 103-361(I), at 5 (1993), *reprinted in* 1993 U.S.C.C.A.N. 2552, 2555.

90. 19 U.S.C. § 1499(c)(4) (2006) (citation omitted).

United States stated, "Congress has also expressly provided that merchandise may be detained and then seized without having gone through a period of exclusion."[91] While this is true, it is not clear that § 1499(c)(4) does anything more than recognize that Customs retains the authority to seize goods during the detention phase. Under the statutory framework, exclusion is deemed to occur if Customs does not release or seize the goods within the initial thirty-day detention period.[92] Nothing in § 1499(c)(4) states that seizure *after* an exclusion precludes judicial review in the CIT of the *precedent* exclusion.

The legislative history indicates that the purpose of the Mod Act amendments was not to prevent importers from utilizing existing paths to judicial review, but rather to "provide the importer with notice of the detention decision and a remedy if the detention extends beyond 60 days."[93] The legislative history states further, "Section 613 will bring the law into conformity with existing practice regarding the examination and detention of merchandise."[94] Existing practice at the time of enactment was represented by decisions such as *R.J.F. Fabrics*, *Milin Industries*, and *International Maven*. *R.J.F. Fabrics* and *Milin Industries* clearly rejected the proposition that a postexclusion seizure trumps CIT jurisdiction in favor of the district courts.[95] There is not a single statement in the legislative history indicating that Congress intended to overrule *R.J.F. Fabrics* and *Milin Industries* and preclude CIT jurisdiction over an exclusion protest properly brought before the Court.

The CIT's jurisdiction over exclusion protests connected to seizures was evaluated once again in the recent decision *PRP Trading Corp.*[96] Unlike *International Maven*, *CDCOM*, *H&H Wholesale*, and others, this case did not involve alleged infringement of trademarks or copyrights. Rather, this case involved alleged false country-of-origin marking on aluminum extrusions.[97] Two of the entries were seized more than thirty days after examination.[98] These entries were deemed excluded under

---

91. 21 Ct. Int'l Trade 435, 439 n.7 (1997).

92. Customs itself has interpreted the statute to mean that an exclusion occurs if Customs does not seize the merchandise within the first thirty days. *See* T.D. 99-65, 33 Cust. B. & Dec. 278, 279 (1999) ("After 30 days, or such longer period authorized by law, if Customs has not made a determination to release or seize, the goods are deemed to be excluded for purposes of 19 U.S.C. § 1514.").

93. H.R. REP. NO. 103-361(I), at 109 (1993).

94. *Id.* at 110.

95. *See supra* notes 44-53 and accompanying text.

96. No. 12-00103, slip op. at *1-2 (Ct. Int'l Trade Oct. 2, 2012).

97. *Id.* at *2.

98. *Id.* at *3.

§ 1499(c) prior to seizure.[99] Three additional entries were seized within thirty days of exam and hence were not deemed excluded.[100] In finding the absence of CIT jurisdiction, the court stated, "[T]his is a seizure case at its heart [and] the fact of seizure trumps the fact of deemed exclusion."[101] Relying on 28 U.S.C. § 1356, the CIT concluded that jurisdiction lies in the district courts.[102] The CIT distinguished *CBB Group* on the basis that the seizure occurred prior to commencement of the action in the CIT.[103] The CIT gave the plaintiff an opportunity to request transfer to a district court.[104]

PRP Trading is consistent with CIT decisions postdating the Mod Act amendments to § 1499. Nonetheless, the CIT arguably could have retained jurisdiction over the two entries deemed excluded consistent with *R.J.F. Fabrics*. As in *R.J.F. Fabrics*, the underlying admissibility issue in *PRP Trading* concerned a determination of country of origin.[105] This substantive issue is one of the core competencies of the CIT. The cases finding jurisdiction lacking notwithstanding a deemed exclusion, such as *Tempco Marketing* and *Genii Trading*, largely hinged on the fact that the underlying substantive issue involved trademark law. By no means does this Article advocate that the source of substantive law underpinning the contested admissibility decision should determine CIT jurisdiction. An exclusion based on intellectual property rights[106] is just as cognizable in the CIT as an exclusion based on false labeling, much like a federal district can be called upon to decide questions of origin or labeling in a forfeiture proceeding brought under 28 U.S.C. § 1355. However, if there is a deemed or express exclusion brought before the CIT pursuant to a valid protest, there is sufficient authority to establish that § 1356 does not necessarily "trump" CIT jurisdiction to review the exclusion and to determine if the underlying admissibility determination was correct.

---

99. *Id.* at *3-4.
100. *Id.* at *4.
101. *Id.* at *5.
102. *Id.* at *6.
103. *Id.* at *5.
104. *Id.* at *6-7. Over the government's objection, the CIT transferred the case to a federal district court on October 10, 2012. *Id.* at *7.
105. *Id.* at *2.
106. *See, e.g.*, Jazz Photo Corp. v. United States, 439 F.3d 1344, 1346-47 (Fed. Cir. 2006); Corning Gilbert Inc. v. United States, 837 F. Supp. 2d 1303, 1305 (Ct. Int'l Trade 2012); Ross Cosmetics Dist. Ctrs., Inc. v. United States, 17 Ct. Int'l Trade 814, 815 (1993).

V. RESIDUAL JURISDICTION UNDER § 1581(i) OVER DETENTIONS, EXCLUSIONS, AND SEIZURES

In the absence of a protestable exclusion, several plaintiffs have sought judicial review in the CIT under the so-called residual jurisdiction provisions in 28 U.S.C. § 1581(i). In most of these cases, the plaintiffs asserted jurisdiction under § 1581(i)(3), arguing that Customs' action arose out of a law providing for embargoes or other quantitative restrictions, or under § 1581(i)(4), which grants the CIT jurisdiction over claims arising out of a law providing for "administration or enforcement" of matters provided for elsewhere in § 1581.[107]

The seminal case on residual jurisdiction related to admissibility decisions is *K Mart Corp. v. Cartier, Inc.*[108] The plaintiffs in *K Mart* were not importers of excluded or seized merchandise. Rather, the plaintiffs were intellectual property rights holders that filed suit in district court to challenge a Customs regulation implementing 19 U.S.C. § 1526(a), which failed to prohibit importation of certain gray-market goods.[109] The jurisdictional issue in *K Mart* was whether § 1526(a) was a law providing for "embargoes or other quantitative restrictions" within the meaning of § 1581(i)(3).[110] The United States Supreme Court held that an embargo under the statute must be a governmentally imposed quantitative restriction of zero.[111] The Court further held that section 526(a) of the Tariff Act of 1930 did not impose an embargo because, rather than a governmentally imposed restriction, it was merely a mechanism through which a private party may enlist Customs' aid in enforcing a private trademark right.[112] The Court also held that the plaintiff's claim did not arise out of law providing for "administration and enforcement" of matters set forth in § 1581 because there was no denied protest.[113]

In both *R.J.F. Fabrics* and *Milin Industries*, the underlying admissibility decision concerned violations of quota restrictions. In both cases, the CIT stated it would have residual jurisdiction under § 1581(i) even if there was no protestable exclusion.[114] These decisions would appear to be unaffected by *K Mart*. However, decisions concerning exclusions and seizures based on trademark or copyright infringement

---

107. 28 U.S.C. § 1581(i)(3)-(4) (2006).
108. 485 U.S. 176 (1988).
109. *Id.* at 181.
110. *Id.* at 183 (internal quotation marks omitted).
111. *Id.* at 185.
112. *Id.*
113. *Id.* at 190-91 (internal quotation marks omitted).
114. R.J.F. Fabrics, Inc. v. United States, 10 Ct. Int'l Trade 735, 740 (1986); Milin Indus., Inc. v. United States, 12 Ct. Int'l Trade 658, 664 (1988).

have led to a different result. Following *K Mart*, the CIT in *CDCOM* held that seizures based on trademark violations do not implicate the administration or enforcement of embargoes or quantitative restrictions and consequently the CIT could not assert jurisdiction under § 1581(i).[115] This issue appears to be well settled in the context of seizures based on trademarks and copyrights.

Not all Customs seizures are premised on trademark or copyright violations. Numerous statutes and regulations contain governmentally imposed restrictions or prohibitions on the importation of goods that have nothing to do with the private rights that were found dispositive in *K Mart*.[116] Questions remain as to whether admissibility decisions underlying such seizures are properly reviewable in the CIT under § 1581(i) in the absence of a protestable exclusion. Certainly, *R.J.F. Fabrics* and *Milin Industries* would tend to support CIT jurisdiction, provided that the admissibility decision arose out of one of the laws specified in § 1581(i)(1)-(3).[117]

In *Ancient Coin Collectors Guild v. U.S. Customs & Border Protection*, an importer of coins seized by Customs filed suit in district court.[118] The coins had been detained upon entry and were seized three months later.[119] The underlying basis for seizure was Customs' determination that the coins were prohibited cultural property under 19 U.S.C. § 2606 and 19 C.F.R. § 12.104.[120] Because the importer did not file a protest, the district court found that jurisdiction would not lie under 28 U.S.C. § 1581(a).[121] Although the district court acknowledged that "the language of 28 U.S.C. § 1581(i)(3)-(4) could be read to confer on the CIT exclusive jurisdiction over this action," it ultimately concluded that the CIT did not have jurisdiction over the plaintiff's claims under § 1581(i).[122]

The district court focused its analysis on the interplay of 28 U.S.C. §§ 1356 and 1581(i), relying heavily on the so-called carve-out in § 1356.[123] Section 1356 confers jurisdiction upon the district court "of any seizure under any law of the United States . . . except matters within

---

115. CDCOM (U.S.A.) Int'l, Inc. v. United States, 21 Ct. Int'l Trade 435, 440 (1997).
116. *See* 19 C.F.R. pt. 12 (2012).
117. *See R.J.F. Fabrics*, 10 Ct. Int'l Trade at 735; *Milin Indus.*, 12 Ct. Int'l Trade at 658.
118. 801 F. Supp. 2d 383 (D. Md. 2011), *aff'd*, 698 F.3d 171 (4th Cir. 2012).
119. *Id.* at 414-15.
120. *Id.* at 393-94.
121. *Id.* at 397 n.9.
122. *Id.* at 397. The defendant did not assert that the CIT had jurisdiction over the plaintiff's action—the court examined jurisdiction *sua sponte*. *Id.* at 396.
123. *Id.* at 396-97.

the jurisdiction of the Court of International Trade under section 1582" of title 28.[124] The district court concluded that the absence of any reference to § 1581 in the carve-out indicated congressional intent to retain district court jurisdiction in seizure cases that would otherwise fall under CIT jurisdiction under § 1581.[125] The court further noted that the amendment of § 1356 to add the § 1582 carve-out was contemporaneous with the enactment of § 1581 and thus indicated congressional intent to retain district court jurisdiction.[126] The court expressly declined to decide whether the Customs regulations imposed an "embargo" or "quantitative restriction" on imports within the meaning of § 1581(i)(3).[127] The district court also noted, though did not appear to rely upon, the fact that jurisdiction under § 1581(i) is intended to be "residual" and therefore applies only where meaningful judicial review is not otherwise available.[128]

It is not altogether clear that the district court reached the correct result. The crux of the plaintiff's complaint was not the act of seizure but rather the validity of Customs' regulations.[129] The plaintiff could have presumably filed a separate declaratory judgment action, in which case § 1356 would not have been relevant to the jurisdictional question. It is quite possible that a district court could conclude that 19 U.S.C. § 2602 imposes an embargo,[130] in which case the CIT might properly exercise jurisdiction over an action challenging an admissibility decision made pursuant to that statute.[131]

The question of whether a Customs exclusion from entry arises out of a law providing for "embargoes" has arisen in the context of exclusion orders issued by the International Trade Commission (Commission) pursuant to 19 U.S.C. § 1337(d).[132] Once the Commission issues an exclusion order, the statute directs the Secretary of the Treasury (delegated to Customs) to refuse entry of merchandise covered by the

---

124. 28 U.S.C. § 1356 (2006).

125. *Ancient Coin*, 801 F. Supp. 2d at 397.

126. *Id.*

127. *Id.* at 398 n.10 (quoting 28 U.S.C. § 1581(i)(3) (internal quotation marks omitted)).

128. *Id.* at 397-98.

129. *Id.* at 416 ("ACCG has made clear that its primary purpose in importing the coins at issue and then challenging their seizure was to challenge the validity of the import restrictions in federal court.").

130. The author expresses no opinion as to whether 19 U.S.C. § 2602 or 19 C.F.R. § 12.104 impose an "embargo" under the standards of *K Mart*.

131. An action brought by the United States for forfeiture under 28 U.S.C. §§ 1355 and 1356 would necessarily lie in the district court.

132. 19 U.S.C. § 1337(d) (2006).

Commission order.[133] If Customs excludes merchandise from entry based upon a finding that the merchandise is covered by the Commission order, then the importer can file a protest under 19 U.S.C. § 1514(a)(4) to challenge the exclusion.[134] The CIT has jurisdiction under 28 U.S.C. § 1581(a) to review denial of a protest, and the CIT has used this to reach decisions on the merits of patent issues.[135]

However, where a patent owner challenged Customs' failure to exclude merchandise allegedly covered by an exclusion order, the CIT has found an absence of jurisdiction.[136] In *Funai Electric Co. v. United States*, the CIT, citing *K Mart*, stated that a Commission exclusion order did not involve an embargo or quantitative restriction within the meaning of § 1581(i)(3).[137] The CIT's opinion did not provide any further analysis.

Jurisdiction under § 1581(i)(3)-(4) with respect to Commission exclusion orders might be worthy of a second look. In *K Mart*, the Supreme Court emphasized that the enforcement of § 1526 is entirely in the trademark owners', not the government's, control.[138] The Court also stated that § 1526 was unusual, indicating that its holding might not apply to many other importation prohibitions that relate to intellectual property.[139] The Court noted:

> Section 526 is an unusual (if not unique) breed of importation prohibition in that it takes all control out of the Government's hands and puts it in the hands of private parties. The only other importation prohibitions mentioned by the parties or JUSTICE SCALIA that might even conceivably match that description are the prohibitions against the importation of goods that infringe trademarks, see 15 U.S.C. § 1124, or copyrights, see 17 U.S.C. §§ 601-603.[140]

Whereas § 1526 provides a trademark owner with sole authority to decide whether any products bearing its trademark can be admitted by Customs and to decide who may import them, § 1337 gives the government control over determining whether to provide relief, the scope of any relief provided, and the conditions of the relief.[141] Given the volume of § 1337 cases, this jurisdictional issue is likely to surface again.

---

133. *Id.* § 1337(e).
134. *Id.* § 1514(a)(4).
135. *See* Jazz Photo Corp. v. United States, 439 F.3d 1344, 1347-48 (Fed. Cir. 2006).
136. Funai Elec. Co. v. United States, 645 F. Supp. 2d 1351 (Ct. Int'l Trade 2009).
137. *Id.* at 1357.
138. K Mart Corp. v. Cartier, Inc., 485 U.S. 176, 186 (1988).
139. *Id.* at 186 n.6.
140. *Id.*
141. 19 U.S.C. § 1337(e) (2006).

VI. CONCLUSION

Judicial review over agency admissibility determinations that involve detentions, exclusions, and seizures plays an important role in the regulation of international trade. Framing the case and choosing the proper venue—the district courts or the CIT—can have a significant impact on the ultimate resolution of the case. Even though the district courts have jurisdiction over seizures and actions to forfeit seized property, the CIT has expertise in reviewing administrative decisions by Customs and can play an important role in providing prompt judicial review of admissibility decisions. In determining how to proceed, recent decisions such as *CBB Group*[142] and *PRP Trading*[143] explain the jurisdictional issues that can arise under the CIT's protest jurisdiction where an exclusion of goods precedes a seizure. Conversely, decisions such as *Ancient Coin*[144] and *Funai Electric*[145] underscore challenges courts face in finding an "embargo" sufficient to trigger the CIT's residual jurisdiction under §1581(i). In all instances, a practitioner must remain wary that either court may find that a Customs "seizure" precludes judicial review in the CIT over an admissibility decision that otherwise might be cognizable in the CIT under its protest or residual jurisdiction.

142. 783 F. Supp. 2d 1248 (Ct. Int'l Trade 2011).
143. No. 12-00103, slip op. (Ct. Int'l Trade Oct. 2, 2012).
144. 801 F. Supp. 2d 383, 397-98 (D. Md. 2011), *aff'd*, 698 F.3d 171 (4th Cir. 2012).
145. 645 F. Supp. 2d 1351, 1357 (Ct. Int'l Trade 2009).