

RECENT DEVELOPMENTS

JURISDICTION OVER IMPORTS CONTROVERSIES AFTER THE CUSTOMS COURTS ACT OF 1980—ALBERTA GAS CHEMICALS, LTD v. CELANESE CORP.

In March, 1979, the Treasury Department issued a determination that methanol produced by plaintiff, Alberta Gas Chemicals, Inc., would likely be sold at less than its fair value.¹ A hearing was then held before the International Trade Commission to determine whether the importation of methanol at less than its fair value would likely injure the domestic methanol industry.² Celanese Corporation, the largest domestic producer of methanol, testified at this hearing concerning the projected demand for methanol in the United States during the 1980's.³ Pursuant to the Commission's determination of likely injury, the Treasury Department issued a Finding of Dumping that would subject plaintiff to special anti-dumping duties on the methanol.⁴ Plaintiff challenged the Finding of Dumping in two forums. In August, 1979, plaintiff filed an action against the United States in the Customs Court, now the Court of International Trade,⁵ seeking an adjudication that the Finding of Dumping was "illegal, null, and void."⁶ While the case was still pending in that court, plaintiff filed a second action against Celanese Corporation alleging that false testimony presented by Celanese at the hearing before the Commission resulted in the Finding of Dumping.⁷ The district court dismissed the case for failure to state

¹ *Alberta Gas Chems., Inc. v. United States*, 483 F. Supp. 303, 305 (Cust. Ct. 1980). Plaintiff filed an action in the Customs Court but the suit was dismissed as prematurely filed, *i.e.*, prior to the issuance of a Finding of Dumping by the Treasury Department. *Alberta Gas Chems., Inc. v. Blumenthal*, 467 F. Supp. 1245, 1256 (Cust. Ct. 1979). This action will not be discussed further.

² *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 639 (S.D.N.Y. 1980).

³ *Id.* at 638-39.

⁴ *Id.* at 639.

⁵ Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727 (codified in scattered sections of 19, 28 U.S.C.A. (West Supp. 1982)). The Customs Courts Act of 1980 renamed the Customs Court as the United States Court of International Trade. *Id.* § 101, 28 U.S.C.A. § 251.

⁶ *Alberta Gas Chems., Inc. v. United States*, 483 F. Supp. 303, 306 (Cust. Ct. 1980).

⁷ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 638-39 (S.D.N.Y. 1980). On appeal, the action was characterized as one in which the plaintiff sought damages and an injunction compelling Celanese to provide the Commission with correct information concerning the demand for methanol. *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 650 F.2d 9, 11 (2d Cir. 1981).

a cause of action.⁸ On appeal, the Second Circuit held that the International Trade Commission has inherent power to reconsider its decisions if fraud is alleged in its proceedings. *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9 (2d Cir. 1981).

The Customs Courts Act of 1980⁹ realigned jurisdiction over imports controversies between the federal district courts and the Court of International Trade, as the Customs Court has been renamed, by expanding the jurisdiction of the latter.¹⁰ This realignment implements the constitutional mandate for uniformity in customs matters.¹¹ It also relieves the overcrowding of the federal district courts¹² and utilizes the expertise of the judges of the Court of International Trade in highly technical customs cases.¹³

Prior to the passage of the Act, a "confusing jurisdictional morass"¹⁴ existed in which cases were frequently dismissed on jurisdictional grounds rather than being decided on their merits.¹⁵ Three major jurisdictional problems emerged in cases litigated during the 1970's.¹⁶ First, designation of the proper court to determine which court had jurisdiction was not clearly settled.¹⁷ Second,

⁸ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 641 (S.D.N.Y. 1980).

⁹ Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727 (codified in scattered sections of 19, 28 U.S.C.A. (West Supp. 1982)). Hereinafter, the court will be referred to as the Customs Court in reference to cases decided or under review prior to the passage of the Act.

¹⁰ Customs Courts Act of 1980 § 201, 28 U.S.C.A. §§ 1581-83.

¹¹ The Constitution of the United States requires uniformity in the application and interpretation of customs laws. U.S. CONST. art. I, § 8. Such uniformity was difficult to achieve when customs matters were litigated before judges in district courts throughout the country as well as the specialized Customs Court. *E.g.*, *Customs Courts Act: Hearing on S. 2857 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. 68-70 (1978) (statement of Hon. Edward D. Re) [hereinafter cited as *1978 Senate Hearing*]; see generally Re, *Litigation Before the United States Court of International Trade*, 26 N.Y.L. SCH. L. REV. 437, 437-38 (1981); Rodino, *The Customs Courts Act of 1980*, 26 N.Y.L. SCH. L. REV. 459, 459 (1981).

¹² *Customs Courts Act of 1980: Hearings on H.R. 6394 Before the Subcomm. on Monopolies and Commercial Law of the House Comm. on the Judiciary*, 96th Cong., 2d Sess. 7 (1980) (statement of Sen. DeConcini) [hereinafter cited as *1980 Hearings*]. In a recent overview of suggested solutions to the congestion in the federal courts, however, the removal of tax and patent litigation from the district courts was recommended without mention of customs and imports litigation. Clark, *A Commentary on Congestion in the Federal Courts*, 8 ST. MARY'S L.J. 407 (1976).

¹³ See, *e.g.*, *1978 Senate Hearings*, *supra* note 11, at 47.

¹⁴ *Id.* at 49 (statement of Barbara Babcock).

¹⁵ See, *e.g.*, *1980 Hearings*, *supra* note 12, at 51 (statement of David M. Cohen).

¹⁶ While Congress recognized the need for revision of the jurisdiction of the Customs Court during the 1960's, it limited the Customs Courts Act of 1970, Pub. L. No. 91-271, 84 Stat. 274 (1970) (amended 1980), to procedural matters, leaving the jurisdictional problems for later resolution. S. REP. NO. 94-466, 96th Cong., 1st Sess. 2-3 (1979).

¹⁷ The Customs Court has been held to be the proper forum for determining its own

many decisions concerning which court had jurisdiction actually turned on the adequacy of the relief available in the Customs Court.¹⁸ Third, many courts expressed concern that plaintiffs were manipulating jurisdiction by including ancillary claims in order to avoid the Customs Court.¹⁹

Procedures have varied for determining whether a federal district court may assert proper jurisdiction over an imports controversy. The difficulty of the question apparently has resulted in a refusal on the part of some courts to decide their own jurisdiction. In one case, a federal district court refused to decide its jurisdiction and ordered the plaintiffs to refile their action in the Customs Court in order that the latter court might decide whether it had jurisdiction.²⁰ Another case reached the Court of Appeals for the District of Columbia before being sent to the Customs Court for a decision concerning its jurisdiction.²¹ In the foregoing situations, the district court retained jurisdiction in case the Customs Court found that it lacked jurisdiction.²² In other cases, a district court itself has found that the Customs Court had jurisdiction, and that finding has been upheld by the circuit court of appeals without any prior input from the Customs Court.²³

The inadequacy of relief available in the Customs Court was usually an insufficient basis for ousting that court's jurisdiction.²⁴

jurisdiction even when the action was brought in a federal district court. *E.g.*, *SCM Corp. v. United States International Trade Commission*, 549 F.2d 812, 821 (D.C. Cir. 1977); *Barclay Industries, Inc. v. Carter*, 494 F. Supp. 912, 912-13 (D.D.C. 1980). A federal district court may properly decide, however, that it does not have jurisdiction over a customs matter. *E.g.*, *Cornet Stores v. Morton*, 632 F.2d 96, 100 (9th Cir. 1980); *Sneaker Circus, Inc. v. Carter*, 566 F.2d 396, 398 (2d Cir. 1977). In the latter case, the Court of Appeals reversed the district court's finding of lack of jurisdiction.

¹⁸ *E.g.*, *Cornet Stores v. Morton*, 632 F.2d 96, 100 (9th Cir. 1980); *Jerlian Watch Co., Inc. v. United States Department of Commerce*, 597 F.2d 687, 687 (9th Cir. 1979); *Flintkote Co. v. Blumenthal*, 596 F.2d 51, 58 (2d Cir. 1979); *Barclay Industries, Inc. v. Carter*, 494 F. Supp. 912, 914 (D.D.C. 1980). The Customs Courts Act of 1980 explicitly grants to the Court of International Trade powers in law and equity equivalent to those of a federal district court, thereby eliminating most bases for challenging jurisdiction on the grounds of the inability of the court to grant full relief. Customs Courts Act of 1980 § 201, 28 U.S.C.A. § 1585.

¹⁹ *E.g.*, *Cornet Stores v. Morton*, 632 F.2d 96, 98 (9th Cir. 1980); *Barclay Industries, Inc. v. Carter*, 494 F. Supp. 912, 913 (D.D.C. 1980); *Flintkote Co. v. Blumenthal*, 469 F. Supp. 115, 124 (N.D.N.Y.), *aff'd*, 596 F.2d 51 (2d Cir. 1979).

²⁰ *Sybron Corp. v. Carter*, 438 F. Supp. 863 (W.D.N.Y. 1977).

²¹ *SCM Corp. v. United States International Trade Commission*, 549 F.2d 812, 821 (D.C. Cir. 1977); *SCM Corp. v. United States*, 450 F. Supp. 1178, 1194 (Cust. Ct. 1978).

²² See *supra* notes 20 and 21.

²³ *Cornet Stores v. Morton*, 632 F.2d 96, 97 (9th Cir. 1980); *Jerlian Watch Co., Inc. v. United States Department of Commerce*, 597 F.2d 687, 692 (9th Cir. 1979).

²⁴ See *supra* note 18.

Only in the case where a plaintiff had no means whatsoever for obtaining jurisdiction in the Customs Court could a district court properly take jurisdiction over an imports controversy.²⁵ Even the class action status of a suit filed in a district court was not sufficient for the assertion of jurisdiction by the district court if the issue could be resolved in the Customs Court in an individual suit.²⁶ Nor was financial impossibility of a plaintiff's pursuit of a remedy in Customs Court a sufficient reason for a district court to grant relief when the Customs Court had jurisdiction.²⁷

Related to the issue of the adequacy of the remedy available in the Customs Court is a concern that all issues in a controversy be determined in a single forum. This concern, however, was not a sufficient reason for a district court to take jurisdiction over a case otherwise within the exclusive jurisdiction of the Customs Court.²⁸ Courts have often expressed reservations about plaintiffs' motives in including claims in their complaints that are outside the jurisdiction of the Customs Court.²⁹

In summary, prior to the passage of the Customs Courts Act of 1980, jurisdictional issues frequently were litigated in imports cases. The courts were split on whether the jurisdiction of the Customs Court should be decided by the Customs Court itself or the district court; jurisdiction was readily found to be in the Customs Court despite the lack of complete relief available in that forum.

²⁵ *Barclay Industries, Inc. v. Carter*, 494 F. Supp. 912, 914 (D.D.C. 1980). The court found that even though the district court would be a more satisfactory forum, Customs Court jurisdiction would not be defeated. *Id.*

²⁶ *Id.*

²⁷ *Jerlian Watch Co. v. United States Department of Commerce*, 597 F.2d 687, 692 (9th Cir. 1979). The court explained its holding as follows: "If we were to hold that financial impossibility placed plaintiffs within the 'adequate remedy' exception to Customs Court jurisdiction, we would be carving out a large exception to Customs Court jurisdiction that Congress did not intend in providing for the uniform administration of the customs laws." *Id.*

²⁸ *Barclay Industries, Inc. v. Carter*, 494 F. Supp. 912, 913 (S.D.N.Y. 1980); *Flintkote Co. v. Blumenthal*, 469 F. Supp. 115, 124 (N.D.N.Y.), *aff'd*, 596 F.2d 51 (2d Cir. 1979).

²⁹ One court contended that plaintiffs "could escape the exclusive jurisdiction of the Customs Court simply by alleging violations of other statutes or of constitutional provisions," *Barclay Industries, Inc. v. Carter*, 494 F. Supp. 912, 913 (S.D.N.Y. 1980), and that the plaintiffs in the case before it had sought purposefully to avoid Customs Court jurisdiction by framing their complaint to fall within the exceptions to its exclusive jurisdiction. *Id.* Another court described a claim before it as seeking "some kind of ancillary relief in connection with a matter that ultimately must be decided, if at all, by the United States Customs Court." *Flintkote Co. v. Blumenthal*, 469 F. Supp. 115, 124 (N.D.N.Y.), *aff'd*, 596 F.2d 51 (2d Cir. 1979). The court denied the ancillary relief. *Id.* at 126. The Ninth Circuit has expressed its concern that plaintiffs are advancing "creative arguments . . . in hopes of avoiding the exclusivity of Customs Court jurisdiction." *Cornet Stores v. Morton*, 632 F.2d 96, 98 (9th Cir. 1980).

The Customs Courts Act of 1980 greatly expands the jurisdiction of the Court of International Trade. The Act enumerates several areas of exclusive jurisdiction for the Court of International Trade.³⁰ It also provides a residual category of jurisdiction for actions arising under any other federal laws concerning international trade.³¹ In addition, the court is granted exclusive jurisdiction over counterclaims, cross-claims, and third-party actions involving imported merchandise that is the subject matter of an original action before the court.³² The purpose of this provision is to ensure that the rights of all parties in a single controversy are adjudicated in a single forum.³³ The powers of the Court of International Trade are designated explicitly as fully equivalent to those of a federal district court.³⁴ This provision should serve to prevent the bringing of imports controversies before federal district courts on the basis of inadequate relief in the Court of International Trade. Finally, the adjudication of claims in the correct forum should be facilitated by the provision that actions improperly commenced in a federal district court are to be transferred to the Court of International Trade and vice versa.³⁵ This provision implies that the court in which the action is first filed should determine which court has jurisdiction.

While the Act specifically addressed problems concerning the division of jurisdiction between the federal district courts and the Court of International Trade, it did not provide any mechanism for the consolidation of actions that are only in part within the exclusive jurisdiction of the Court of International Trade.³⁶ Testimony in the Congressional hearings had noted potential problems in not providing some overlapping jurisdiction for complex cases.³⁷ The related actions filed by Alberta Gas Chemicals in the former Customs Court and a federal district court illustrate some

³⁰ Customs Courts Act of 1980 § 201, 28 U.S.C.A. § 1581.

³¹ Customs Courts Act of 1980 § 201, 28 U.S.C.A. § 1581(i)(1)-(3). This grant of exclusive jurisdiction over the enumerated residual matters affecting imports shifts the caseload from the federal district courts to the Court of International Trade. The grant was intended to make clear that such suits are properly commenced only in the Court of International Trade. H.R. REP. No. 96-1235, 96th Cong., 2d Sess. 47 (1980).

³² Customs Courts Act of 1980 § 201, 28 U.S.C.A. § 1583.

³³ H.R. REP. No. 96-1235, 96th Cong., 2d Sess. 49-50 (1980).

³⁴ Customs Courts Act of 1980 § 201, 28 U.S.C.A. § 1585. See *supra* note 18.

³⁵ Customs Courts Act of 1980 § 201, 28 U.S.C.A. § 1584.

³⁶ Prior to the passage of the Act, the part of the action within the jurisdiction of the federal district court would not be addressed by either court. The Customs Court would hear only the matters within its jurisdiction. See *supra* note 28.

³⁷ See *Customs Courts Act of 1979, S. 1654: Hearing on S. 1654 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 96th Cong., 1st*

problems that may arise as a result of the lack of overlapping jurisdiction between the courts.³⁸

Both actions involved the importation of methanol produced by plaintiff. Plaintiff's claim against the United States arose when the Treasury Department issued a Finding of Dumping³⁹ based on the determination by the International Trade Commission that the importation of methanol at less than fair value would likely injure American methanol producers.⁴⁰ Plaintiff first challenged the Finding of Dumping in the Customs Court,⁴¹ but before the matter was resolved, plaintiff filed a tort action against Celanese Corporation in federal district court.⁴² The central issue in the tort claim was whether allegedly false testimony concerning the projected demand for methanol influenced the Commission's determination of likely injury to the domestic industry.⁴³ In dicta, the district court stated that exclusive jurisdiction concerning the Finding of Dumping lay in the Customs Court, but that the Commission should first reconsider its determination of likely injury to the domestic methanol industry in light of the alleged perjury.⁴⁴ The case was dismissed for failure to state a cause of action.⁴⁵ On appeal, the Second Circuit stayed the tort action until the Commission reconsidered its determination.⁴⁶ The rationale for the specific holding was that any tribunal, including an administrative agency, has the inherent power to reconsider its determinations in view of possible perjury in proceedings before it.⁴⁷

Although the district court stated in dicta that jurisdiction over the validity of the Finding of Dumping lay in the Customs Court,⁴⁸ the Second Circuit refused to reach the issue of jurisdiction.⁴⁹ It

Sess. 10-12 (1979) (testimony of David M. Cohen); see generally Cohen, *The "Residual Jurisdiction" of the Court of International Trade Under the Customs Courts Act of 1980*, 26 N.Y.L. SCH. L. REV. 471, 488 (1981).

³⁸ Chronologically, Alberta Gas Chemicals brought the following actions concerning the importation of methyl alcohol: *Alberta Gas Chems., Inc. v. Blumenthal*, 467 F. Supp. 1245 (Cust. Ct. 1979) (see *supra* note 1); *Alberta Gas Chems., Inc. v. United States*, 483 F. Supp. 303 (Cust. Ct. 1980); *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637 (S.D.N.Y. 1980), *remanded with instructions*, 650 F.2d 9 (2d Cir. 1981).

³⁹ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 650 F.2d 9, 11 (2d Cir. 1981).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Alberta Gas. Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637 (S.D.N.Y. 1980).

⁴³ *Id.* at 639.

⁴⁴ *Id.* at 639, 641.

⁴⁵ *Id.* at 639.

⁴⁶ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 650 F.2d 9, 14 (2d Cir. 1981).

⁴⁷ *Id.* at 13.

⁴⁸ See *supra* notes 43 and 44 and the text to which they pertain.

⁴⁹ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 650 F.2d 9, 14 (2d Cir. 1981).

should be noted at this point that the Customs Court Act of 1980 went into effect after the decision by the district court and prior to the decision by the Second Circuit.⁵⁰ Although the Second Circuit did note that the lower court considered its jurisdiction to be dubious,⁵¹ it nevertheless ruled on the appeal and remanded the case to the district court.⁵² That court was to retain jurisdiction in the event that the Commission did find the perjury by Celanese influenced its determination of likely injury, thereby providing a basis for the damage claim against Celanese.⁵³

The Second Circuit's decision does not obviate the possibility of a different result in the action before the Court of International Trade. Since the first action was still pending in the Court of International Trade,⁵⁴ essentially the same question is being litigated concurrently in the two forums. This situation may result in conflicting decisions. For example, if evidence of fraud is not introduced in the proceeding in the Court of International Trade, that court may hold the Finding of Dumping to be valid. The district court, on the other hand, may be compelled to dismiss the action if the Finding of Dumping is invalid. This would occur if the Commission, upon reconsideration in light of the alleged perjury, withdraws its original finding of likely injury.⁵⁵ If, according to the Commission, there is a valid basis for overturning the Finding of Dumping, the proceeding in the Court of International Trade should also be affected by that information. However, although the holding of the Second Circuit implies that no further litigation should be pursued in either court until the Commission exercises its inherent power to reconsider its determination, the holding binds only the district court.

It is possible that there were valid reasons for plaintiff to have brought the action against Celanese Corporation in federal district court. Plaintiff alleged that the damage relief it sought was not available in the Customs Court, as a damage claim against a domestic producer could not, and under the 1980 Act still cannot, be brought in the Court of International Trade.⁵⁶ The district court,

⁵⁰ Customs Courts Act of 1980 § 701.

⁵¹ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 650 F.2d 9, 11 (2d Cir. 1981).

⁵² *Id.* at 14.

⁵³ *Id.* at 12.

⁵⁴ *Id.* at 11.

⁵⁵ *Id.* at 12.

⁵⁶ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 641 (S.D.N.Y. 1980). The Customs Courts Act of 1980 only provides for jurisdiction when either party was the United States or an officer or agency thereof. Customs Courts Act of 1980 § 201, 28 U.S.C.A. §§ 1581-83.

however, pointed out that plaintiff was seeking primarily a "declaration that the Commission was misled by false testimony and would have reached a different result but for that testimony."⁵⁷ If the Commission changed its determination, plaintiff would have no damage claim.⁵⁸ Without a damage claim, the federal district court would not have jurisdiction over an imports controversy.⁵⁹ Thus, plaintiff's tort action may be viewed as an effort to avoid the jurisdiction of the Court of International Trade.⁶⁰

The Second Circuit could have found that there was no need for litigation of the issue of fraud in the district court and transferred the case to the Court of International Trade. The Court of International Trade then would determine whether the Commission should reconsider its determination.⁶¹ This would be more appropriate, as this court has jurisdiction to review Commission determinations when final.⁶² Therefore, if the Second Circuit had transferred the perjury issue to the Court of International Trade, plaintiff would not be denied the damage relief sought.

It may be argued that the disposition of this case has constricted the effective jurisdiction of the Court of International Trade. Because the Second Circuit formulated the issue as one within the jurisdiction of the Court of International Trade,⁶³ it should have stayed the action in the federal district court and transferred the case to the Court of International Trade.

The problem remains that neither the district court nor the Court of International Trade is empowered to adjudicate both the tort claim and the Finding of Dumping underlying it. A provision for concurrent jurisdiction, rejected by Congress, would have permitted the entire matter to be heard in the district court.⁶⁴ While such an alternative would expedite review and further the goal of judicial economy, it would fail to utilize the expertise of the judges of the Court of International Trade and possibly violate the constitutional

⁵⁷ *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 641 (S.D.N.Y. 1980).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See *supra* note 29 and the text to which it pertains.

⁶¹ The same three reasons that motivated the expansion of the jurisdiction of the Court of International Trade by the Customs Courts Act of 1980 would direct that court to take jurisdiction over the present issue: the constitutional mandate of uniformity in customs matters, the need to relieve the overburdened federal district courts from trying matters not necessarily within their jurisdiction, and the availability of the expertise of the judges of the Court of International Trade. See *supra* notes 11, 12, and 13 and the text to which they pertain.

⁶² *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 641 (S.D.N.Y. 1980).

⁶³ See *id.* and *Alberta Gas Chems., Ltd. v. Celanese Corp.*, 650 F.2d 9, 12 (2d Cir. 1981).

⁶⁴ See *supra* note 36.

mandate for uniformity in customs matters. Were the jurisdiction of the Court of International Trade further expanded to allow it to hear the entire controversy involving the administrative agency,⁶⁵ the importer, and the affected domestic industry, the goals of uniformity, expedited review, and use of judicial expertise would be served. As an unfortunate consequence, however, such expanded jurisdiction would burden the Court of International Trade with matters outside its areas of expertise. It is important to note that the problem of non-overlapping jurisdiction is not limited to tort claims concerning importation, but also has arisen in a recent antitrust case.⁶⁶

The goal of the Customs Courts Act of 1980 to enable the rights of all parties to be adjudicated in a single forum⁶⁷ has not been implemented, at least not in situations where tort or antitrust claims exist against competitors.⁶⁸ The effects of the Second Circuit decision were to resist judicial economy and constrict the jurisdiction of the Court of International Trade. Plaintiff may have had valid reasons for bringing the second action in federal district court, but the transfer of the issue of the validity of the Finding of Dumping to the Court of International Trade would have implemented more effectively the goals of the Customs Courts Act of 1980. Without denying plaintiff the relief of tort damages, however, there is no alternative to splitting the controversy between the two courts involved.

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⁶⁵ The International Trade Commission was involved in the Alberta Gas Chemicals cases. See *supra* note 38. The Customs Service was involved in *Nike, Inc. v. Rubber Mfrs. Ass'n, Inc.*, 509 F. Supp. 912 (S.D.N.Y. 1981). See *infra* note 66.

⁶⁶ In this case, the court in dicta stated that evidence established in the Court of International Trade could be used in a subsequent antitrust proceeding in the district court. *Nike, Inc. v. Rubber Mfrs. Ass'n, Inc.*, 509 F. Supp. 912, 918 (S.D.N.Y. 1981). The defendants in this case were alleged to have provided false information that influenced the Customs Service to charge plaintiff excessive duties. *Id.* at 914. The district court stayed the proceedings to allow plaintiff to pursue the appropriate remedies before the Customs Service, and, if necessary, before the Court of International Trade. *Id.* at 918. In this controversy concerning duty on imported footwear, jurisdiction again was split between the district court in which the antitrust action would have to be heard and the Court of International Trade.

⁶⁷ H.R. REP. NO. 96-1235, 96th Cong., 2d Sess. 49-50 (1980).

⁶⁸ See *supra* note 66.

