VEIL-PIERCING IN CUSTOMS ENFORCEMENT PROCEEDINGS: THE ROLE OF FEDERAL COMMON LAW *

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ABSTRACT

Veil-piercing, although a subject of considerable jurisprudence and academic literature, has to date been the subject of relatively sparse litigation before the U.S. Court of International Trade. International trade practitioners thus may be interested to learn that there is a Federal common law of veil-piercing that the Court of International Trade may draw upon when the Government seeks to recover unpaid customs duties or penalties from individuals or entities other than the official importer of record. This article discusses the potential applicability of the Federal common law of veil-piercing in customs enforcement proceedings, explaining the doctrine's contours (particularly in the U.S. Court of Appeals for the Federal Circuit) and discussing the manner in which it may be applied in future proceedings by the Court of International Trade.

I. INTRODUCTION

The typical scenario in which the Federal Government may seek to initiate customs enforcement proceedings against an individual or entity that is not the official "importer of record" for entries of foreign merchandise into the United States is straightforward: A closely held company imports large quantities of goods from abroad and fraudulently or negligently misrepresents the goods' value, origin, or tariff classification—depriving the Government of hundreds of thousands of dollars in lost revenue. Then, when U.S. Customs & Border Protection (CBP) begins investigating the importer's misconduct or issues penalties, the company closes-up shop, pocketing the gain while effectively leaving taxpayers holding the bag.[1] In these situations, CBP and the Department of Justice have long asserted the Government's right to

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[1] Although importers are required to have a surety bond for their goods, *see* 19 U.S.C. § 1623; 19 C.F.R. § 113.11, if an importer materially misrepresents the goods' value, origin, or tariff classification, the amount the Government can collect on the bond may be far less than the full amount of duties owed. *See, e.g.*, *United States v. Pan Pac. Textile Grp., Inc.*, 395 F. Supp. 2d 1244, 1245 n.2 (Ct. Int'l Trade 2005) (indicating that Government obtained partial recovery of outstanding duties from surety following scheme to submit materially false entry documentation).

pursue customs enforcement claims under 19 U.S.C. § 1592(a)[2] and (d)[3] asserting joint and several liability against other entities and individuals, such as parent and successor companies or corporate principals involved in the misconduct.[4] The Government's authority to pursue redress in this manner was affirmed by the United States Court of Appeals for the Federal Circuit in *United States v. Trek Leather, Inc.*, in which the Court sitting *en banc* held that section 1592(a)'s reference to a "person" violating the statute's terms is sufficiently broad to encompass both importers of record and other individuals and entities who "introduce" merchandise into the United States by means of false statements, acts, or omissions.[5] Significantly, *Trek Leather* also made clear that the Government need not seek to "pierce the corporate veil" of the importer of record in initiating customs enforcement proceedings against those "persons" who negligently "introduce" merchandise in violation of section 1592(a).[6]

It is nonetheless easy to imagine alternate scenarios in which direct liability under section 1592 would not provide an adequate remedy. For example, the principal(s) of a closely held corporation may not personally be involved in "introducing" fraudulently or negligently imported merchandise into the United States, say, because a subordinate was responsible for

[2] Section 1592(a) provides penalties for false statements, acts, and omissions in connection with the importation of merchandise into the United States. A person violates 19 U.S.C. § 1592 if, without regard to whether the United States is deprived of any duty, "by fraud, gross negligence, or negligence," that person enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of "any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material." 19 U.S.C. § 1592(a)(1)(A).

[3] Section 1592(d) provides an independent cause of action allowing the Government to recover lawful duties, taxes, or fees that it is owed as a result of a section 1592(a) violation, stating that CBP "shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed." 19 U.S.C. § 1592(d). A second statute, 19 U.S.C. § 1505, also authorizes the Government to collect unpaid duties, but refers solely to duties paid by the "importer of record," meaning it does not authorize the Government to seek redress from other parties. *See* 19 U.S.C. § 1505(a).

[4] *See, e.g.*, *United States v. Matthews*, 533 F. Supp. 2d 1307 (Ct. Int'l Trade 2007), *aff'd*, 329 F. App'x 282 (Fed. Cir. 2009) (judgment against corporations and corporate officers for violations of section 1592(a)); *United States v. Golden Ship Trading*, 22 C.I.T. 950, 953 (1998) ("This Court has adjudicated many cases wherein one who is not the importer of record was held liable for penalties when the circumstances warranted.").

[5] *See United States v. Trek Leather, Inc.*, 767 F.3d 1288, 1296-99 (Fed. Cir. 2014)

[6] *See id*. at 1299 (holding that individual could be held directly liable because "he personally committed a violation of [19 U.S.C. § 1592(a)(1)(A)]").

completing all of the relevant paperwork. Yet, particularly if a corporation is undercapitalized or defunct, these individuals may possess all of the relevant proceeds. Similarly, the principal(s) of a closely held corporation may simply choose to shut the company down and walk away with its capital and assets once CBP initiates enforcement proceedings, or, more egregiously, to take all of the company's capital and assets and re-incorporate under a different name to avoid paying outstanding duties or penalties. With increasing focus on duty evasion issues within the United States international trade community,[7] the incidence of these types of scenarios is likely to increase. Thus, despite the *Trek Leather* decision's clarification that veil-piercing is unnecessary when the Government asserts direct liability under section 1592, there may be future instances in which the Government relies on veil-piercing in customs enforcement proceedings. To date, however, the Court of International Trade's veil-piercing jurisprudence is fairly sparse.

Parties on both sides of future cases thus may be interested to learn of the existence of a Federal common law of veil-piercing that has been applied with regularity in the context of nationwide Federal statutory regimes akin to customs enforcement statutes, and which appears to have at least some reach within the Federal Circuit (the lone Federal court of appeals to review decisions by the Court of International Trade). Although it varies somewhat among the circuits that have adopted it, the Federal common law standard focuses both on typical veil-piercing criteria involving the observance of corporate formalities and on the potential for injustice in the absence of a veil-piercing remedy. It thus provides a more uniform and predictable standard than relying on the veil-piercing criteria from one of 50 different states, depending on a defendant company's state of incorporation. The Federal standard also still constitutes a relatively high hurdle for holding individuals and entities other than a corporate defendant liable, while also

[7] *See, e.g.*, Staff Report, *Duty Evasion: Harming U.S. Industry And American Workers*, Prepared for Senator Ron Wyden (Nov. 8, 2010), *available at* http://www.wyden.senate.gov/download/?id=ab312b37-d16b-495c-a103-c1887afb37af (visited November 14, 2014) (discussing duty evasion issues generally) [hereinafter Wyden Report].

providing a less-stringent test for purposes of enforcing a nationwide statutory regime than the particularly high barriers that some states have erected to corporate veil-piercing.

This article explores the contours of the Federal common law of veil-piercing and its potential application in customs enforcement proceedings. Part II provides background on veil-piercing. Part III provides an overview of the Federal common law of veil-piercing, including the extent of its application by the Federal Circuit. Part IV discusses the Court of International Trade's veil-piercing jurisprudence to date. Part V discusses the potential application of the existing Federal veil-piercing jurisprudence in future customs enforcement proceedings.

II. BACKGROUND ON VEIL-PIERCING

"Piercing the corporate veil" connotes the practice of courts looking beyond the corporate form to hold individual shareholders or a parent entity liable for a company's actions and debts.[8] The veil-piercing doctrine—which courts also sometimes refer to an "alter ego" or "mere instrumentality" theory of liability[9]—functions as a common law principle that forms an exception to the basic rule of limited liability for corporate officers and shareholders.[10] When it is applied, the "veil" of the "corporate fiction," or the "artificial personality" of the corporation, is "pierced," and the individual or corporate shareholder exposed to liability, based on the notion

[8] *See Black's Law Dictionary* (9th ed. 2009) (defining "Piercing the Corporate Veil" as "[t]he judicial act of imposing personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts").

[9] *See generally Fletcher Cyclopedia of the Law of Private Corporations* [hereinafter *Fletcher Cyclopedia*] § 41.10 (entitled "Alter ego or mere instrumentality test"). *See also Black's Law Dictionary* (9th ed. 2009) (defining "alter ego" as a "corporation used by an individual in conducting personal business," which may lead to veil-piercing).

[10] *See Fletcher Cyclopedia* § 41.20 ("insulation from personal liability is an essential attribute of a corporation"); *Black's Law Dictionary* (9th ed. 2009) (defining "Corporate Veil" as "[t]he legal assumption that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions"). *See also Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) ("[I]ncorporation's basic purpose is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom it employs.") (citations omitted); *First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 625 (1983) ("Separate legal personality has been described as an almost indispensable aspect of the public corporation.") (citation and internal quotation marks omitted).

that the debt in question is not really a debt of the corporation, but in fairness ought to be viewed as a debt of the individual or corporate shareholder or shareholders.[11]

Because it is an exception to the baseline limited liability rule, corporate veil-piercing typically requires a substantial showing by the party seeking the veil-piercing remedy.[12] The standards and factors courts apply in connection with veil-piercing inquiries vary from state to state.[13] Frequently, however, a party seeking to pierce the corporate veil must establish that corporate owners, through domination of the corporation, abused the privilege of doing business in the corporate form to perpetrate wrong or injustice such that a court in equity will intervene.[14] In other words, courts will typically look to see whether there is a unity of interest between the corporation and its principals and/or a significant disregard of corporate formalities,[15] combined with additional equitable reasons to hold the targets of the veil-piercing inquiry liable for actions taken on the corporation's behalf.[16] Some of the most common reasons include fraud, illegality,

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[11] Stephen B. Presser, *Piercing the Corporate Veil* [hereinafter Presser, *Piercing the Corporate Veil*] § 1:1 (citations and emphasis omitted). As explained in one frequently quoted judicial statement on the doctrine: "[A] corporation will be looked upon as a legal entity as a general rule . . . but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." *United States v. Milwaukee Refrigerator Transit Co.*, 142 F. 247, 255 (C.C.E.D.Wis. 1905).

[12] Additionally, veil-piercing itself does not constitute a basis of liability; there must be substantive grounds to hold the individual or entity at issue liable in addition to grounds to pierce the corporate veil. *See Fletcher Cyclopedia* § 41.10 ("A claim based on the alter ego theory is not in itself a claim for substantive relief, but rather is procedural. . . . It merely furnishes a means for a complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation. . . . Since alter ego corporations are not of themselves illegal, the fact that an individual is the alter ego of a corporation is insufficient to state a claim against an individual.").

[13] *See id.* § 41 (noting state-to-state differences in application of veil-piercing principles) (citations omitted).

[14] *Id.* § 41.10 (citations omitted); *see also id.* ("One who seeks to disregard the corporate veil must show that the corporate form has been abused to the injury of a third party.") (citations omitted).

[15] Specific factors that many states consider include: (1) whether the subject of a veil-piercing claim owns most or all of the corporation's stock; (2) whether a shareholder has subscribed to all of the corporation's capital stock or otherwise caused its incorporation; (3) whether there is inadequate capitalization; (4) whether a shareholder uses the corporation's property as his or her own (for example, through co-mingling of funds); (5) whether the corporation's directors or executives act independently in the corporation's interest or simply take orders from a shareholder; and (6) whether the formal legal requirements of the corporation are observed (for example, through holding regular board meetings, keeping meeting minutes, and voting on decision-making). *See id.*

[16] One rationale for this approach is that, if the corporation's shareholders themselves disregard the proper corporate formalities, then the law will do likewise as necessary to protect individual and corporate creditors. *Id.* ("[T]hose who fail to maintain full corporate formalities cannot expect the state to grant them the limited liability that flows

contravention of contract, public wrong, inequity, and whether the corporation was formed to defeat public convenience.[17]

Consequently, regardless of the specific grounds for piercing the corporate veil, courts tend to engage in highly fact-driven inquiries that analyze the totality of the circumstances in determining whether veil-piercing is warranted.[18] In doing so, consistent with the doctrine's nature as an exception to limited shareholder liability, courts tend to resort to veil-piercing sparingly and in exceptional circumstances.[19]

Moreover, as a common law doctrine, veil-piercing inquiries typically depend on the law of a corporation's home state. Yet, as noted above, the standards for veil-piercing vary among different states, making the applicable law a significant issue in determining a particular veil-piercing claim's likelihood of success.[20] In New York, for example, a party seeking to pierce a company's corporate veil generally is required to make a two-part showing (1) that the owner exercised "complete domination" of the corporation with respect to the transactions at issue; and (2) that this domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil.[21] A party need not specifically plead fraud to succeed on a veil-piercing claim in

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from the corporate form.") (citations omitted). The approach also provides incentives to those using the corporate form to obey the state's laws fully by maintaining the formalities and legal separateness of the corporation. *Id*.

[17] *Id*. § 41 (citations omitted).

[18] *See id*. § 41.10 ("The propriety of piercing the corporate veil is highly dependent of the equities of the situation, and the inquiry tends to be highly fact-driven. . . . . Because there is no single factor that alone justifies piercing the corporate veil, a careful review of the entire relationship between various corporate entities and their directors and officers may reveal that such an equitable action is warranted.") (citations omitted); *id*. § 41 ("Regardless of the basis for piercing the corporate veil, a determination should be made with regard to the totality of the facts and circumstances of each case.") (citations omitted).

[19] *See id*. § 41.10; *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003) ("The doctrine of piercing the corporate veil, however, is the rare exception, applied in the case of fraud or certain other exceptional circumstances . . . and usually determined on a case-by-case basis.") (citations omitted).

[20] *See supra* text accompanying note 13.

[21] *Morris v. New York State Dep't of Taxation & Fin.*, 623 N.E.2d 1157, 1160-61 (N.Y. 1993); *Shisgal v. Brown*, 801 N.Y.S.2d 581, 583 (App. Div. 2005); *see also Wm. Passalacqua Builders, Inc. v Resnick Devs. S., Inc.*, 933 F.2d 131, 137-39 (2d Cir 1991) (providing extended discussion of New York veil-piercing law). Factors to be considered under New York law include failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use. *Millennium Const., LLC v. Loupolover*, 845 N.Y.S.2d 110, 111 (App. Div. 2007) (citation omitted).

New York, but must alternatively show that the owner's control of the corporation was so complete as to constitute an alter ego relationship that leads to wrong against the other party.[22]

Other states may have more lenient veil-piercing standards. The two main requirements for veil-piercing under California law, for example, are that (1) "there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist," and (2) "there must be an inequitable result if the acts in question are treated as those of the corporation alone."[23] California's "inequitable result" gloss on the second veil-piercing factor provides greater scope for courts to grant veil-piercing remedies.

Still other jurisdictions have higher barriers to corporate veil-piercing. In Nevada, for instance, a stockholder, director or officer can only be considered the alter ego of a corporation for veil-piercing purposes if "[t]here is such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other" *and* "[a]dherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice."[24] As a consequence, and as Internet commentary has noted, the prospects for piercing the veil to reach the owner(s) of a company operating in California would be materially different, depending on whether the corporation is a California domestic corporation or a Nevada foreign corporation operating in California.[25] Even more strikingly, a number of Florida court decisions require

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[22] *See Wm. Passalacqua Bldrs.*, 933 F.2d at 138 (citing *Itel Containers Int'l Corp. v. Atlanttrafik Exp. Serv. Ltd.*, 909 F.2d 698, 703 (2d Cir.1990), and *Gartner v. Snyder*, 607 F.2d 582, 586 (2d Cir.1979)).

[23] *Shaoxing Cnty. Huayue Imp. & Exp. v. Bhaumik*, 120 Cal. Rptr. 3d 303, 309-10 (Cal. Ct. App. 2011) (internal quotation marks omitted) (discussing standard articulated in *Automotriz Del Golfo De California S. A. De C. V. v. Resnick*, 306 P.2d 1, 3 (Cal. 1957)). Factors that California courts consider in this inquiry include "the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other." *Shaoxing Cnty. Huayue Imp. & Exp.*, 120 Cal. Rptr. 3d at 310.

[24] Nev. Rev. Stat. § 78.747(2); *cf. Dombroski v. WellPoint, Inc.*, 895 N.E.2d 538 (Ohio 2008) (discussing Ohio's veil-piercing standard, which is similar to, but seemingly more stringent than, New York's standard).

[25] *See* http://en.wikipedia.org/wiki/Piercing_the_corporate_veil (visited Nov. 14, 2014).

individuals or entities against whom a veil-piercing remedy is sought literally to have engaged in fraud or similarly improper conduct before imposing a veil-piercing remedy is appropriate.[26] The actual fraud requirement, as compared to more general "wrong" or "injustice" requirements of other states, constitutes an extremely high standard for veil-piercing that can be very difficult to satisfy.[27] Other states may have similarly strict requirements.[28]

Thus, despite the nationwide purview of customs enforcement statutes and proceedings, if one were to pursue such proceedings under the state-by-state common law regimes, there may be considerable variance in the prospects for veil-piercing, because the Government will be dependent on the law of individual states (which may be highly unfavorable) in pursuing veil-piercing remedies. Similar concerns in other areas of Federal litigation have spurred the development of a Federal common law of veil-piercing that will be discussed in the next section.

III. THE FEDERAL COMMON LAW OF VEIL-PIERCING

The Federal common law on veil-piercing recognizes that there are instances in which it is necessary to hold individual corporate principals and parent entities liable for a corporation's actions to vindicate Federal policies. It stems from the notion, embraced by the Supreme Court

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[26] *See Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1116-21 (Fla. 1984) (holding that Florida veil-piercing requires fraud or improper conduct, meaning "some illegal, fraudulent or other unjust purpose"); *see also*, *e.g.*, *Moran v. Schurger*, 849 So.2d 1184 (Fla. Dist. Ct. App. 2003) (reversing lower court veil-piercing decision because there was "no intent by [shareholder] to defraud or mislead anyone" and corporation "was not organized or used by [shareholder] to mislead creditors or to perpetrate a fraud upon them"); *Rashdan v. Sheikh*, 706 So. 2d 357 (Fla. Dist. Ct. App. 1998) (corporate veil should not have been pierced absent allegations or evidence of fraud, fraudulent transfer, or other improper conduct).

[27] *See Resolution Trust Corp. v. Latham & Watkins*, 909 F. Supp. 923, 931 (S.D. N.Y. 1995) ("Absent proof of intentionally fraudulent conduct, courts simply do not pierce the corporate veil under Florida law.") (citing *Hilton Oil Transp. v. Oil Transp. Co.*, 659 So. 2d 1141 1152-53 (Fla. Dist. Ct. App. 1995) (improper conduct not established, despite shareholder's operation of a wholly-owned corporation in a "loose and haphazard manner" without capital or formalities, because claimant did not show that the corporation "was either organized for or being used as an instrument for fraudulent, illegal, or improper purposes")); *Gov't of Aruba v. Sanchez*, 216 F. Supp. 2d 1320, 1362 (S.D. Fla. 2002) (discussing "very heavy burden" to pierce veil under Florida law).

[28] *See Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc.*, 728 A.2d 783, 789-91 (Md. 1999) (indicating that Maryland's veil-piercing jurisprudence requires fraud or similar conduct); *Iceland Telecom, Ltd. v. Info. Sys. and Networks Corp.*, 268 F. Supp. 2d 585, 591 (D. Md. 2003) (discussing Maryland's "markedly restrictive approach to piercing the corporate veil"); *Blair v. Infineon Technologies AG*, 720 F. Supp. 2d 462, 471 (D. Del. 2010) (reflecting that, historically under Delaware law, "fraud or something like it is required" to pierce corporate veil) (citation omitted).

in *Anderson v. Abbott*,[29] that "the interposition of a corporation will not be allowed to defeat a legislative policy, whether that was the aim or only the result of the arrangement."[30] The Supreme Court has further explained that "[t]he policy underlying a federal statute may not be defeated" by an assertion of limited shareholder liability under state law[31] and hence has "consistently refused to give effect to the corporate form where it is interposed to defeat legislative policies."[32]

Courts have applied Federal common law to veil-piercing questions when the veil-piercing inquiry implicates a Federal interest, such as when the Federal Government has a financial stake in the outcome and when the Government's regulatory interests are implicated through a federal statute.[33] Another related factor is the potential need for a uniform Federal rule in cases involving the enforcement of Federal statutory and regulatory regimes.[34]

These principles have led courts to look to Federal common law when considering veil-piercing remedies in a diverse set of contexts, ranging from labor disputes under the National Labor Relations Act,[35] to proceedings under False Claims Act,[36] to proceedings concerning

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[29] *Anderson v. Abbott*, 321 U.S. 349 (1944).
[30] *Id*. at 362-63 (citations omitted); *see also id*. at 362 ("Mr. Chief Judge Cardozo stated that a surrender of [the] principle of limited liability would be made 'when the sacrifice is so essential to the end that some accepted public policy may be defended or upheld.'" (quoting *Berkey v. Third Ave. Ry. Co.*, 155 N.E. 58, 61 (N.Y. 1926)).
[31] *Id*. at 365 (citations omitted); *see also Clearfield Trust Co. v. United States*, 318 U.S. 363, 366-67 (1943) (holding that duties imposed upon the United States and rights acquired by it as a result of exercising constitutional functions of power find their roots in Federal sources and are not dependent on state law).
[32] *First Nat'l City Bank*, 462 U.S. at 630 (quoting *Anderson v. Abbott*, 321 U.S. at 362-63).
[33] *See Fletcher Cyclopedia* § 41.90; *United States v. Emor*, 850 F. Supp. 2d 176, 205 (D.D.C. 2012). At least one influential commentary has argued that Federal common law need not mirror state law, because "federal common law should look to federal statutory policy rather than to state corporate law when deciding whether to pierce the corporate veil." Note, *Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law*, 95 Harv. L. Rev. 853 (1982) [hereinafter Note, *Alter Ego Doctrine*].
[34] *See Fletcher Cyclopedia* § 41.90. *See also, e.g., Bhd. of Locomotive Engineers v. Springfield Terminal Ry. Co.*, 210 F.3d 18, 26 (1st Cir. 2000) (discussing need for Federal common law when Federal statute demands national uniformity) (citation omitted); *United States v. Pisani*, 646 F.2d 83, 87-88 (3d Cir.1981) (holding that Federal veil-piercing standards are appropriate in Medicare disputes due to need for uniform Federal approach); *but cf. United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726-38 (1979) (holding that Federal law governs priority of liens under Federal lending programs, but that uniform national rule was unnecessary to protect Federal interests n programs).
[35] *See, e.g., Bhd. of Locomotive Engineers*, 210 F.3d 18; *N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d 722 (8th Cir. 2008); *N.L.R.B. v. Greater Kansas City Roofing*, 2 F.3d 1047 (10th Cir. 1993).

health care coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA),[37] to civil forfeiture proceedings stemming from Federal criminal convictions.[38] Other areas in which courts have developed a body of Federal common law on piercing the corporate veil include the Clayton Act, the Interstate Commerce Act, the Communications Act of 1934, admiralty proceedings, and the Employee Retirement Income Security Act (ERISA).[39] One area in which there has been considerable debate about the applicability of Federal common law with respect to veil-piercing is in imposing liability for environmental clean-up costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[40]

The Federal veil-piercing standards differ somewhat among the various Federal circuit courts of appeal. Frequently, however, Federal courts apply a variation of a two-pronged test that examines: (1) whether there is a unity of interest and ownership such that the separate legal personalities of the corporation and the shareholder(s) no longer exist; and (2) whether it would lead to an inequitable result if the acts at issue were treated as those of the corporation alone.[41] Put another way, the test asks: "(1) have the shareholder and the corporation failed to maintain separate identities? and (2) would adherence to the corporate structure sanction a fraud, promote injustice, or lead to an evasion of legal obligations?"[42] Regardless of the precise formulation, the

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[36] *See, e.g.*, *United States ex rel. Siewick v. Jamieson Sci. and Eng'g, Inc.*, 191 F. Supp. 2d 17 (D.D.C. 2002), *aff'd*, 322 F.3d 738 (D.C. Cir. 2003); *Pencheng Si v. Laogai Research Found.*, No. 09-CV-2388 (KBJ), 2014 WL 5446487, at *20 (D.D.C. Oct. 14, 2014) (citing *Siewick*); *Pisani*, 646 F.2d at 85-87; *United States v. Lorenzo*, 768 F. Supp. 1127, 1133 (E.D. Pa. 1991) (citing *Pisani*).
[37] *See, e.g.*, *Shuck v. Wichita Hockey Inc.*, 356 F. Supp. 2d 1191 (D. Kan. 2005); *In re Shelby Yarn Co.*, 306 B.R. 523 (W.D.N.C. 2004).
[38] *See, e.g.*, *Emor*, 850 F. Supp. 2d 176.
[39] *See Fletcher Cyclopedia* § 41.90 (citations omitted).
[40] *See United States v. Bestfoods*, 524 U.S. 51, 64 n.9 (1998) (noting "significant disagreement among courts and commentators" regarding this issue, while declining to address it because it was not presented in the case).
[41] *See, e.g.*, *Siewick*, 191 F. Supp. 2d at 21 (quoting *Labadie Coal Co. v. Black*, 672 F.2d 92, 96 (D.C. Cir.1982)) (describing test in D.C. Circuit); *Bolivar-Tees*, 551 F.3d at 728 (quoting *Minn. Laborers Health & Welfare Fund v. Scanlan*, 360 F.3d 925, 928 (8th Cir. 2004)) (describing similar test in 8th Circuit); *Greater Kansas City Roofing*, 2 F.3d at 1052 (describing similar test in 10th Circuit).
[42] *Emor*, 850 F. Supp. 2d at 206 (quoting *Bufco Corp. v. N.L.R.B.*, 147 F.3d 964, 969 (D.C. Cir. 1998)).

Federal standard is generally articulated in broad terms and requires fact-intensive analysis of the circumstances to determine the propriety of veil-piercing in a given case.[43]

Although commentators have disagreed regarding the benefits of the development of a Federal common law of veil-piercing,[44] there seems to be little disagreement that a significant number of courts apply Federal veil-piercing standards in cases involving Federal interests.[45]

It also seems reasonably clear that the Federal Circuit has periodically invoked Federal common law veil-piercing standards.[46] As the commentary explains, the Federal Circuit's application of the Federal standard appears to require (1) proof of domination and control of the corporation by the target(s) of the veil-piercing claim and (2) the exercise of that domination and control to perpetrate a fraud or similar inequity or injustice upon the plaintiff.[47] Thus, in *Minnesota Mining & Manufacturing Co. v. Eco Chem, Inc.*,[48] the Court held that:

> The corporate form is not readily brushed aside. However, when substantial ownership of all the stock of a corporation in a single individual is combined with other factors clearly supporting disregard of the corporate fiction on grounds of fundamental equity and fairness, courts have experienced little difficulty and have shown no hesitancy in applying what is described as the 'alter ego'

[43] *See Fletcher Cyclopedia* § 41.90; *Bhd. of Locomotive Engineers*, 210 F.3d at 26. *See also Exter Shipping Ltd. v. Kilakos*, 310 F. Supp. 2d 1301, 1317 (N.D. Ga. 2004) ("Under federal common law, no uniform standard exists for determining when a corporation is the alter ego of its owners; each case must be decided based upon the totality of the circumstances.") (citations and internal quotation marks omitted).
[44] *Compare* Note, *Alter Ego Doctrine* (supporting development of Federal veil-piercing law) *with* Presser, *Piercing the Corporate Veil* § 3:1 (expressing skepticism regarding development of Federal common law of veil-piercing).
[45] *See generally* Presser, *Piercing the Corporate Veil* Ch. 3 (discussing jurisprudence concerning Federal veil-piercing standards within each Federal appellate circuit).
[46] *See generally* Presser, *Piercing the Corporate Veil* § 3:15 (discussing Federal Circuit's jurisprudence concerning Federal common law of veil-piercing). *See also Orthokinetics, Inc. v. Safety Travel Chairs, Inc*., 806 F.2d 1565, 1579 (Fed. Cir. 1986) ("To determine whether corporate officers are personally liable for the direct infringement of the corporation under § 271(a) requires invocation of those general principles relating to piercing the corporate veil."); *A. Stucki Co. v. Worthington Indus., Inc.*, 849 F.2d 593, 596 (Fed. Cir. 1988) (approvingly citing both *Orthokinetics* and Note, *Alter Ego Doctrine*); *but see McCall Stock Farms, Inc. v. United States*, 14 F.3d 1562, 1569 n.6 (Fed. Cir. 1993) (declining to reach choice of law issue regarding veil-piercing in "reverse veil-piercing" case); *Insituform Techs., Inc. v. CAT Contracting, Inc.*, 385 F.3d 1360, 1380 (Fed. Cir. 2004) (indicating that, in patent cases, since alter ego issue is not unique to patent law, Federal Circuit will apply law of regional circuit).
[47] *See* Presser, *Piercing the Corporate Veil* § 3:15
[48] *Minnesota Min. & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256 (Fed. Cir. 1985).

> or instrumentality theory in order to cast aside the corporate shield and to fasten liability on the individual stockholder.[49]

The Federal Circuit went on to explain that "[o]ne of the 'other factors' to which courts have looked when 'piercing the corporate veil' is whether insistence on the corporate form would enable the stockholder to avoid legal liability."[50] The Court also noted that "[p]osttort activity, when conducted to strip the corporation of its assets in anticipation of impending legal liability, may be considered in making the determination whether to disregard the corporate entity."[51]

Regarding the specific facts in *Minnesota Mining & Manufacturing*, the Federal Circuit explained that the family that was the subject of the veil-piercing claim owned 80 percent of the company's stock, while possessing all of its know-how.[52] It further explained that the family operated the company without the oversight of a formal board of directors, without consulting with the minority stockholders, and "without adhering to the corporate formalities which normally serve to buttress the recognition of the corporation as a separate entity."[53] The Federal Circuit also noted the trial court's finding that, by stripping the corporation of its assets, the family controlling the corporation "purposely manipulated [the company] so as to thwart [the plaintiff's] recovery of its judgment," and stated that "[t]his is precisely the situation in which courts feel most comfortable in using their equitable powers to sweep away the strict legal separation between corporation and stockholders."[54] The Court thus relied on general common law veil-piercing principles in holding that the trial court had not abused its discretion by piercing the corporate veil.[55]

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[49] *Id*. at 1264 (citation omitted).
[50] *Id*.
[51] *Id*. (citation and quotation marks omitted).
[52] *Id*. at 1265.
[53] *Id*.
[54] *Id*. (citation omitted).
[55] *See id*.

The Federal Circuit similarly relied on general veil-piercing principles in *A. Stucki Co. v. Worthington Industries, Inc.*, a patent infringement case in which the patent holder sought to pierce the veil to reach the corporation holding a majority of shares in a second corporation that, in turn, owned 50 percent of the patent infringer's stock.[56] In examining the claim, which it ultimately rejected, the Federal Circuit explained that determining whether corporate officers are personally liable for a corporation's patent infringement requires "invocation of those general principles relating to piercing the corporate veil" and cited case law invoking Federal common law veil-piercing standards, as well as the often-cited Harvard Law Review note discussing the Federal common law of veil-piercing.[57] The Court further explained that the defendant corporation could be liable for direct infringement "only if the evidence reveals circumstances justifying disregard of the status of [the infringer] and [the defendant] as distinct, separate corporations."[58] In *Stucki*, however, there was "no evidence that [the defendant] had control over [the infringer's] actions and could have stopped the infringement."[59] The Court also noted that "[m]ere ownership of stock is not enough to pierce the corporate veil[.]"[60]

In an additional case, *Manville Sales Corp. v. Paramount Systems, Inc.*,[61] the Federal Circuit explained that "a court may exert its equitable powers and disregard the corporate entity if it decides that piercing the veil will prevent fraud, illegality, injustice, a contravention of public policy, or prevent the corporation from shielding someone from criminal liability."[62] The Court, however, also noted that authority on which it relied for this principle stated that unless there is "specific intent to escape liability for a specific tort . . . the cause of justice does not

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[56] *Stucki*, 849 F.2d 593.
[57] *Id*. at 596 (quoting *Orthokinetics, Inc.*, 806 F.2d at 1579, and approvingly citing Note, *Alter Ego Doctrine* and *Milgo Elec. Corp. v. United Business Communications*, 623 F.2d 645, 660 (10th Cir. 1980)).
[58] *Id*. (citation omitted)
[59] *Id*. (citing *Milgo Elec. Corp.*, 623 F.2d at 660).
[60] *Id*. (quoting *Milgo Elec. Corp.*, 623 F.2d at 662).
[61] *Manville Sales Corp. v. Paramount Sys., Inc.*, 917 F.2d 544 (Fed. Cir. 1990).
[62] *Id*. at 552 (citation omitted).

require disregarding the corporate entity"[63] and went on to hold that the individuals at issue could not be held liable because they had acted within the scope of their employment and the corporation was not otherwise their alter ego.[64]

Thus, the Federal Circuit does not appear to have adopted Federal veil-piercing standards explicitly, but nonetheless has repeatedly invoked "general principles" relating to veil-piercing, while citing case law and commentary regarding Federal veil-piercing standards.[65] The Court thus appears to recognize the possibility of applying those Federal veil-piercing standards in appropriate circumstances.

IV. THE COURT OF INTERNATIONAL TRADE'S EXISTING VEIL-PIERCING JURISPRUDENCE

The Court of International Trade has scant jurisprudence concerning veil-piercing issues.

One of the few decisions that touch on the issue is the Court's summary judgment ruling in *Aegis Security Insurance Co. v. Fleming*, a lawsuit in which Aegis, a surety that had settled with the Government regarding its insured's underpayment of duties, sought to recoup its losses by proceeding individually against the company's principal under a veil-piercing theory.[66] Aegis accused the company's principal of using the corporation for improper purposes and urged the Court to hold him personally liable under its indemnification cause of action.[67] In determining whether Aegis's lawsuit could proceed against the individual defendant, the Court looked to USCIT Rule 17(b), which mirrors Federal Rule of Civil Procedure 17(b) in stating that the capacity of an individual to sue or be sued is determined by the law of the individual's

[63] *Id*. (citation omitted); *but see Insituform Technologies*, 385 F.3d at 1373 (invoking *Manville Sales Corp*. without reference to a "tort escaping" requirement).
[64] *See id*. at 552-53.
[65] *See, e.g.*, *Stucki*, 849 F.2d at 596 (citations omitted).
[66] *Aegis Sec. Ins. Co. v. Fleming*, 593 F. Supp. 2d 1346 (Ct. Int'l Trade 2008)
[67] *See id*. at 1349.

domicile.[68] Thus, rather than looking to Federal common law, the Court grounded its veil-piercing analysis in the state law of Florida as the state in which the defendant was domiciled.[69]

Applying Florida law, the Court denied Aegis's motion for summary judgment, despite evidence that the defendant was the sole owner, shareholder, and operator of the company, as well as that he failed to observe various corporate formalities (in addition to his involvement in falsely classifying the imports).[70] The Court determined that Florida courts will only pierce the corporate veil when the corporation is the alter ego of its shareholders and the shareholders engaged in fraudulent or similarly improper conduct.[71] Hence, the Court held that "[t]he issue here is [defendant's] intent, a fact that is very difficult to establish on summary judgment" and that the defendant's deposition testimony "raise[d] a genuine issue of material fact as to whether he engaged in fraudulent conduct," requiring the denial of Aegis's summary judgment motion.[72] It thus appears that Florida's particularly high standard for veil-piercing requiring fraud or similar conduct played a role in the Court's decision to deny summary judgment.[73]

In contrast to *Aegis*, the Court of International Trade relied on general veil-piercing principles to hold a corporation liable for the acts of its sister company in a customs enforcement case captioned *United States v. Inn Foods, Inc.*[74] The Court stated that "[a] corporation may be an alter ego or business conduit of another and its separate corporate existence will not be

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[68] *Aegis*, 593 F. Supp. 2d at 1350 (quoting USCIT R. 17(b)) (language subsequently amended without substantive changes); *see also* Fed. R. Civ. P. 17(b) (containing language identical to USCIT R. 17(b)).
[69] *See Aegis*, 593 F. Supp. 2d at 1350.
[70] *See id*. at 1350-51 (discussing evidence); *see also id*. at 1352 (holding that Aegis had shown that the defendant "controlled and dominated [the company's] operations" and had "failed to adhere to corporate formalities").
[71] *See id*. at 1350 (citing *Dania Jai-Alai Palace*, 450 So. 2d at 1116-21, and *Steinhardt v. Banks*, 511 So. 2d 336, 339 (Fla. Dist. Ct. App. 1987)).
[72] *Id*. at 1353. The Court also held that the individual defendant could not be held liable directly under section 1592, *see id*. at 1353-54, but that was the issue subsequently resolved by *Trek Leather*'s holding that the Government may continue to proceed against individuals who falsely "introduce" merchandise into the United States as jointly and severally liable with corporate defendants. *See Trek Leather*, 767 F.3d at 1296-99.
[73] For a discussion of Florida's veil-piercing standards, *see supra* text accompanying notes 26-28.
[74] *United States v. Inn Foods, Inc.*, 515 F. Supp. 2d 1347 (Ct. Int'l Trade 2007), *aff'd on other grounds*, 560 F.3d 1338 (Fed. Cir. 2009)

recognized where it is so organized and controlled and its business conducted in such a manner as to make it merely an agency or instrumentality of the other corporation."[75]

Applying this principle to the corporations at issue, the Court explained that the two corporations, Inn Foods and Seaveg, (i) were owned and controlled by the same people; (ii) had the same phone number and operated from the same building; (iii) utilized the same employees and officers, and utilized them in the same roles; (iv) paid invoices, regardless of which of the two was the importer of record, from Inn Foods' accounts; (v) had intermingled accounting ledgers; (vi) would combine their names in certain of their contracts and (vii) appeared to be the same entity for all intents and purposes to both its own employees and to CBP.[76] The Court additionally noted that Seaveg, a shell corporation, was admittedly created solely to assist Inn Foods, an operating company and its sister subsidiary, to better conduct its business by providing Inn Foods the use of a different company name to facilitate sales without raising the ire of certain customers.[77] Based on that record, the Court concluded that "[i]n this case Seaveg is an alter ego, or perhaps more appropriately an alias, of its sister subsidiary Inn Foods. Therefore, the fact that Seaveg and Inn Foods were incorporated as two separate entities does not shield Inn Foods from Customs duties and penalties owed on actions it took partly under the name of Seaveg."[78]

Significantly, the Court did not look to identify fraudulent conduct (although it ultimately did find such conduct) prior to treating the two companies as alter egos, as it did when applying Florida law in *Aegis*. It simply held, following its initial findings regarding the companies' alter ego relationship and their undervaluation of entries to deprive the Government of duties, that "Inn Foods is responsible for all the Customs duties and penalties owed in the actions described

[75] *Id*. at 1356 (italics and citations omitted).
[76] *Id*.
[77] *Id*.
[78] *Id*.

herein."[79] On appeal, the Federal Circuit noted that there was "considerable merit" to the Court of International Trade's alter ego holding, but ultimately found it unnecessary to reach the issue because it affirmed the trial court's imposition of liability on Inn Foods under section 1592's aiding and abetting provision, irrespective of any veil-piercing analysis.[80]

The Court of International Trade otherwise has referenced veil-piercing largely in passing as a concept relevant to other issues, providing limited guidance on how the Court might approach veil-piercing in a future customs enforcement case.[81] The same is true of jurisprudence from the Court of International Trade's predecessor, the U.S. Customs Court.[82] Moreover, although the Court in *Aegis* referenced USCIT Rule 17 with respect to choice-of-law issues when considering veil-piercing in an indemnification case,[83] the rule is identical to Federal Rule of Civil Procedure 17 regarding "Capacity to Sue or Be Sued," which courts have not treated as a potential bar to applying Federal veil-piercing criteria.[84]

The Court of International Trade's jurisprudence thus provides only minimal indicia regarding how the Court would approach veil-piercing issues in a Government-initiated section 1592 customs enforcement action, but certainly leaves open the possibility that the Court would look to the Federal common law of veil-piercing in such a case.

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[79] *Id*. at 1357.
[80] *See* 560 F.3d at 1346.
[81] *See, e.g., United States v. Ataka Am., Inc.*, 826 F. Supp. 495, 499 (Ct. Int'l Trade 1993); *Chevron Standard Ltd. v. United States*, 563 F. Supp. 1381, 1384 (Ct. Int'l Trade 1983).
[82] *See, e.g., Serv. Afloat, Inc. v. United States*, 337 F. Supp. 458, 464 (Cust. Ct. 1972), *aff'd*, 353 F. Supp. 885 (Cust. Ct. 1973) ("A corporation may be an alter ego or business conduit of another and its separate corporate existence will not be recognized where it is so organized and controlled and its business conducted in such a manner as to make it merely an agency or instrumentality of the other corporation."); *United States v. Henry A. Wess, Inc.*, 48 Cust. Ct. 700, 706 (1962) ("To warrant such disregard of the corporation's separate existence it was necessary to show, not only that it was [an] alter ego, but that to recognize its separate existence would promote fraud, defeat justice or produce inequitable results") (citations omitted); *but see Wood v. United States*, 505 F.2d 1400, 1406 (C.C.P.A. 1974) (reversing Customs Court veil-piercing holding regarding related-party transactions because "there is no evidence to show that [corporation] was organized for an illegal purpose").
[83] *See Aegis*, 593 F. Supp. 2d at 1350.
[84] Fed. R. Civ. P. 17(b); *see also* 6A Wright & Miller, *Fed. Prac. & Proc. Civ.* § 1559 ("Generally, capacity is conceived of as a procedural issue dealing with the personal qualifications of a party to litigate and typically is determined without regard to the particular claim or defense being asserted.").

V. APPLICATION OF THE FEDERAL COMMON LAW OF VEIL-PIERCING IN CUSTOMS ENFORCEMENT PROCEEDINGS

Although it is unclear whether the Court of International Trade and Federal Circuit ultimately will apply Federal veil-piercing standards in customs enforcement proceedings, there are multiple reasons that could lead them to do so. Customs enforcement cases routinely involve the direct pecuniary interests of the Federal Government in a policy realm that corresponds to the Government's core sovereign powers to impose import duties on foreign goods and to impose penalties on the use of false statements in the importation of goods.[85] As proceedings to collect unpaid duties and penalties, they involve strong Federal interests both in protecting the public fisc and in the regulation of international Commerce.[86] From an enforcement perspective, the Government has equally strong interests in preventing the use of the corporate form to evade duties and penalties, a potential result if the Government were subject to inordinately high veil-piercing barriers in particular states that could serve as safe havens for unscrupulous importers.[87]

Applying Federal veil-piercing standards in customs enforcement proceedings would vindicate these interests. Although courts widely recognize that piercing the corporate veil is an exceptional remedy under any standard,[88] Federal veil-piercing standards appear to provide a more nuanced balance between principles of limited liability and the Government's enforcement interests than states that effectively require that the corporate form be used to perpetrate a fraud before they will allow veil-piercing.[89]

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[85] U.S. CONST. art. I, § 8, cls. 1, 3 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, [and] . . . To regulate Commerce with foreign Nations . . . .").
[86] *See generally* Wyden Report, discussed *supra* note 7.
[87] Indeed, in some instances, combatting import duty evasion can become a matter of public health and safety in the event that an unscrupulous importer engaged in this type of behavior in order to evade regulatory oversight on the importation of goods or merchandise that is potentially unfit for human consumption or use.
[88] *See, e.g.*, *Dole Food Co*, 538 U.S. at 475 (recognizing exceptional nature of veil-piercing remedy).
[89] *See, e.g.*, *Resolution Trust Corp.*, 909 F. Supp. at 931 ("Absent proof of intentionally fraudulent conduct, courts simply do not pierce the corporate veil under Florida law. …") (citation omitted); *Residential Warranty Corp.*, 728 A.2d at 790-91 ("Although . . . federal cases are persuasive authority . . . our discussion . . . demonstrates that

Moreover, courts may identify additional reasons supporting the need for a uniform Federal veil-piercing standard in customs enforcement proceedings.[90] Customs enforcement cases, like other areas in which courts have applied Federal veil-piercing standards, involve a nationwide statutory regime.[91] They take place in a single court of national jurisdiction, the Court of International Trade, with appeals to a second national court, the Federal Circuit.[92] Correspondingly, it would appear to be unfair to parties on both sides of customs enforcement proceedings if the Government's ability to pursue individual defendants and parent entities under this single statutory regime in this single forum were to depend and shift based solely upon the importer of record's state of incorporation. Courts may not condone situations in which the same kinds of activities lead to liability for individuals in New York or California, but not in Florida, due to Florida's particularly draconian veil-piercing jurisprudence.

Additionally, courts already rely on Federal common law standards in approaching veil-piercing questions in the analogous context of enforcement proceedings under the False Claims Act (FCA).[93] The FCA prohibits knowingly false or fraudulent claims for payment to the Federal Government and authorizes the Attorney General and private individuals acting in the Government's name (known as *qui tam* relators) to bring civil actions based on false claims.[94]

Maryland is more restrictive than other jurisdictions in allowing a plaintiff to piece a corporation's veil."); *Blair*, 720 F. Supp. 2d at 471 ("For reasons of public policy, the alter ego standard for piercing the corporate veil is often more lenient for causes of action arising under ERISA, a federal statute, than state law. . . . [T]he required element of fraud or injustice differs slightly between federal and state causes of action in Delaware.") (citations omitted); *Pisani*, 646 F.2d at 87 ("New Jersey law . . . might be more restrictive than the cases relied on by the trial court. In any event, we believe it is undesirable to let the rights of the United States in this area change whenever state courts issue new decisions on piercing the corporate veil.").

[90] *Kimbell Foods*, 440 U.S. at 728 ("[F]ederal programs that 'by their nature are and must be uniform in character throughout the Nation' necessitate formulation of controlling federal rules.") (quoting *United States v. Yazell*, 382 U.S. 341, 354 (1966)); *Bhd. of Locomotive Engineers*, 210 F.3d at 26 (citing *Kimbell Foods*).

[91] *See* 19 U.S.C. § 1592.

[92] *See* 28 U.S.C. § 1582 (granting the Court of International Trade exclusive jurisdiction over actions initiated by the United States to collect customs duties and enforce customs penalties); 28 U.S.C. § 1295(a(5) (granting the Federal Circuit exclusive jurisdiction over appeals from the Court of International Trade).

[93] 31 U.S.C. § 3729 *et seq*.

[94] *See id*. §§ 3729, 3730.

The Government in such cases may collect civil penalties and treble damages for its losses.[95] Exemplifying multiple decisions that have applied Federal veil-piercing standards in FCA cases, one court explained that "[t]he government's interest in protecting itself from fraud, as embodied in the False Claims Act, makes it reasonable to apply the federal common law standard for piercing the corporate veil instead of the test set forth by the state courts . . . where the company is incorporated."[96] That courts interpret this similar statutory regime as requiring application of Federal standards suggests that they may equally do so in the customs enforcement context.

Were the Court of International Trade to apply Federal veil-piercing standards in customs enforcement proceedings, the Federal Circuit's treatment of the subject to date appears consistent with the District of Columbia Circuit's notion of a test that asks: "(1) have the shareholder and the corporation failed to maintain separate identities? and (2) would adherence to the corporate structure sanction a fraud, promote injustice, or lead to an evasion of legal obligations?"[97] This is illustrated by *Minnesota Mining & Manufacturing Co.*, in which the Federal Circuit held that unified ownership combined with one or more "other factors" (such as adherence to the corporate form enabling a stockholder to avoid legal liability) would justify veil-piercing.[98] One can discern a similar principle in *Manville Sales Corp.* and its progeny, in which the Federal Circuit has explained that "a court may exert its equitable powers and disregard the corporate entity if it decides that piercing the veil will prevent fraud, illegality, injustice, a contravention of public policy, or prevent the corporation from shielding someone from criminal liability."[99] To the extent that this line of cases requires the corporate form to be used to escape tort liability

[95] *See id*. § 3729(a)(1).
[96] *Siewick*, 191 F. Supp. 2d at 20-21 (footnote omitted).
[97] *Emor*, 850 F. Supp. 2d at 206 (quoting *Bufco Corp.*, 147 F.3d at 969).
[98] *Minnesota Min. & Mfg. Co.*, 757 F.2d at 1264.
[99] *Manville Sales Corp.*, 917 F.2d at 552 (citation omitted); *Insituform Technologies*, 385 F.3d at 1373 (citing *Manville Sales Corp.*).

before veil-piercing is appropriate, courts may analogize avoiding liability under section 1592 to avoiding liability for the commission of the statutory tort of patent infringement.[100] It thus appears that applying Federal veil-piercing standards in customs enforcement proceedings would be consistent with current Federal Circuit precedent.

VI. CONCLUSION

The foregoing demonstrates that there are significant prospects for applying Federal veil-piercing standards in customs enforcement proceedings before the Court of International Trade. At the same time, the potential for applying the Federal common law of veil-piercing clearly does not constitute a panacea for importer misconduct. As noted above, veil-piercing, even in its most "lenient" forms, constitutes an exceptional remedy that requires significant showings by the party asserting it.[101] Corporate owners and shareholders thus can avoid the prospect of veil-piercing by engaging in minimal efforts to observe corporate formalities. An unscrupulous, but careful, importer thus may readily be able to avoid both direct liability and veil-piercing, while engaging in negligent or fraudulent behavior with respect to the importation of foreign goods.

Nonetheless, seeking veil-piercing under Federal common law standards may provide an additional tool that will enable the Government to pursue customs enforcement proceedings in circumstances under which pursuing joint and several liability against individual defendants and parent entities is not a viable option.[102] Veil-piercing claims therefore may become more prevalent in future litigation.

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[100] *Manville Sales Corp.*, 917 F.2d at 552 (citation omitted) (discussing potential "tort escaping" requirement).
[101] *See, e.g.*, *United States ex rel. Kneepkins v. Gambro Healthcare, Inc.*, 115 F. Supp. 2d 35, 39-41 (D.Mass. 2000) (dismissing Government veil-piercing claims in FCA case as insufficiently pled); *United States ex rel. Lawson v. Aegis Therapies, Inc.*, No. CV 210-72, 2013 WL 5816501, at *4-5 (S.D. Ga. Oct. 29, 2013) (dismissing Government FCA claims for failure to plead facts with particularity with respect to veil-piercing issue).
[102] Agency principles may provide another potential tool to hold parties other than the importer of record liable. *See United States v. O'Connell*, 890 F.2d 563, 567-69 (1st Cir.1989) (holding corporation liable under FCA for acts of its agent); *United States v. Inc. Vill. of Island Park*, 888 F. Supp. 419, 437-39 (E.D.N.Y. 1995) (same).