Cases Susceptible to § 1581(i) Jurisdiction

- While claims of jurisdiction under 28 U.S.C. § 1581(i) can give rise to jurisdictional disputes, there are types of litigation for which such jurisdiction is (usually) non-controversial
  - Challenges to tariffs arising from or related to Presidential action
  - Challenges involving Harbor Maintenance Taxes
  - Challenges involving the Continued Dumping and Subsidy Offset Act
  - Challenges relating to administration and enforcement of statutes that provide for prohibition of, or otherwise affirmatively prohibit, certain importations
  - Challenges to the administration and enforcement of certain agency actions, rather than the substance of the underlying agency determination

Presidential Action

- The Courts have found that challenges to tariffs arising from or related to Presidential action lie under 28 U.S.C. § 1581(i)

  - *Severstal Exp. GMBC v. United States*, CIT Slip Op. 18-37 (Apr. 5, 2018): exercising jurisdiction under § 1581(i) in litigation seeking to enjoin the enforcement of a Presidential Proclamation issued in conjunction with Section 232 of the Trade Expansion Act of 1962

  - *Silfab Solar, Inc. v. United States,* 296 F. Supp. 3d 1296 (Ct Int'l Trade 2018): exercising jurisdiction under § 1581(i) in litigation seeking to enjoin the safeguard measures instituted pursuant to a Presidential Proclamation under Sections 201-203 of the Trade Act of 1974

  - *Motion Sys. Corp. v. Bush*, 342 F. Supp. 2d 1247 (Ct Int'l Trade 2004): exercising jurisdiction under § 1581(i) in appeal from Presidential decision not to impose additional tariffs under Section 421 of the Trade Act of 1974

Presidential Action

- However, while § 1581(i) might provide subject matter jurisdiction generally for challenges to tariffs resulting from or related to Presidential action, §1581(i) does not provide a cause of action
  - *Michael Simon Design, Inc. v. United States*, 637 F. Supp. 2d 1218 (Ct Int'l Trade 2009): refusing to exercise jurisdiction over challenge to President's modification of the Harmonized Tariff Schedule of the United States, because plaintiff failed to show that the action fell within the scope of the Administrative Procedure Act, or that it was otherwise aggrieved by "agency action within the meaning of a relevant statute."

Harbor Maintenance Taxes

- The Courts have found that challenges involving the assessment of Harbor Maintenance Taxes are susceptible to jurisdiction under 28 U.S.C. § 1581(i)

  - *United States Shoe Corp. v. United States*, 114 F.3d 1564 (Fed. Cir. 1997): finding that Congress had expressly directed that HMT under the Comprehensive Water Resources Development Act of 1986 constituted a customs duty, and thus that a challenge to the administration and enforcement of the HMT properly lay under § 1581(i)

  - *Carnival Cruise Lines v. United States*, 866 F. Supp. 1437 (Ct Int'l Trade 1994): noting that Congress directed that HMT should be treated as a customs duty, albeit one charged for purposes other than the raising of revenue, and that jurisdiction with respect to challenges to HMT generally lies under § 1581(i)

- However, CBP's denial of a request for refund of unconstitutional HMT collected on exports is protestable, and thus gives rise to § 1581(a) claim (*see, e.g., Chrysler Corp. v. United States*, 601 F. Supp. 2d 1347 (Ct Int'l Trade 2009)

Continued Dumping and Subsidy Offset Act

- The Courts have treated the Continued Dumping and Subsidy Offset Act of 2000 as a law providing for administration of duties other than for the purposes of raising revenue, and thus have found both facial challenges to the law itself and to the administration of the law susceptible to jurisdiction under 28 U.S.C. § 1581(i)

  - *SKF USA Inc. v. United States*, 451 F. Supp 2d 1355 (Ct Int'l Trade 2006) and *PS Chez Sidney, LLC . U.S. Int'l Trade Comm'n*, 442 F. Supp. 2d 1329 (2006): exercising jurisdiction under § 1581(i) to consider constitutionality of aspects of the Continued Dumping and Subsidy Offset Act

  - *Furniture Brands Int'l v. United States*, 807 F. Supp. 2d 1301 (Ct Int'l Trade 2011): rejecting contention that CDSOA provides for the distribution of duties, but does not provide for the "administration or enforcement" with respect to duties; finding that challenge to denial of "affected domestic producer" status properly lay under 28 U.S.C. § 1581(i)

Administration and Enforcement of Embargoes

- The Courts have found that 28 U.S.C. § 1581(i) provides jurisdiction to challenge environmental statutes that affirmatively prohibit or provide for prohibition of certain importations, and thus function as embargoes
  - *NRDC v. Ross*, 331 F. Supp. 3d 1338 (Ct Int'l Trade 2018): jurisdiction over challenge to implementation of the Marine Mammal Protection Act
  - *Defenders of Wildlife v. Hogarth*, 25 177 F. Supp 2d 1336 (Ct Int'l Trade 2001): jurisdiction over challenge to implementation of the International Dolphin Conservation Program Act
  - *Humane Soc'y of the United States v. Brown*, 901 F. Supp. 338 (Ct Int'l Trade 1995): jurisdiction over challenge to administration and enforcement of Driftnet Act
- Not all environmental statutes provide for or constitute embargoes, however!
  - *Salmon Spawning & Recovery Alliance v. United States*, 626 F. Supp. 2d 1277 (Ct Int'l Trade 2009) and *Native Fed'n of the Madre De Dios River & Tributaries v. Bozovich Timber Prods.*, 491 F. Supp. 2d 1174 (Ct Int'l Trade 2007): finding that certain sections of the Endangered Species Act did not create or provide for embargoes, and thus that jurisdiction regarding implementation of these sections did not lie under 28 U.S.C. § 1581(i)

Administration and Enforcement of Agency Action

- The Courts have repeatedly found that 28 U.S.C. § 1581(i) jurisdiction exists where a plaintiff challenges not the substance of an agency's decision, but the agency's administration and enforcement of that decision

  - *Shinyei Corp. of Am. V. United States*, 355 F.3d 1297 (Fed. Cir. 2004): where liquidation instructions issued by the Department of Commerce deviated from the final determination in the underlying proceeding, plaintiff's challenge to the liquidation instructions properly lay under § 1581(i), as it was a challenge to the administration and enforcement of the underlying determination

  - *Perry Chem. Corp. v. United States*, 375 F. Supp. 3d 1324 (Ct Int'l Trade 2019): Court exercised jurisdiction under § 1581(i)(4) over petition for writ of mandamus to compel issuance of liquidation instructions in accordance with prior court determinations that had resulted in an amended final determination and revocation of a trade remedy order