

Section 1581(i) Cases of Note

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not those of the Department of
Justice

Overview

“Pure” Section 1581(i) Cases

Availability Of Another 1581 Action Cases

“Pure” Section 1581(i) Cases

Challenges To Presidential Proclamations

- *E.g., Silfab Solar, Inc. v. United States*, 892 F.3d 1340 (Fed. Cir. 2018)
 - Affirmed denial of preliminary injunction
 - Canadian manufacturers and importer did not have substantial likelihood of success in challenging temporary section 201 tariffs as contrary to law

“Pure” Section 1581(i) Cases

Challenges To Liquidation Instructions

- *E.g., Sumecht NA, Inc. v. United States*, 923 F.3d 1340 (Fed. Cir. 2018)
 - Affirmed denial of preliminary injunction
 - Importer of crystalline silicon photovoltaic cells from China challenged Commerce’s liquidation instructions assessing China-wide rate before date of *Timken* notice
 - No challenge to jurisdiction—importer failed to establish irreparable harm

“Pure” Section 1581(i) Cases

Actions Seeking Agency Action/Embargo

- *E.g., Natural Resources Defense Council, Inc., et al. v. Ross, et al.*, 331 F. Supp. 3d 1338 (Ct. Int’l Trade 2018), *modified*, 331 F. Supp. 3d 1381 (Ct. Int’l Trade 2018)
 - Granted preliminary injunction
 - Environmental groups challenged agencies’ failure to ban importation of fish or fish products from any Mexican commercial fishery using gillnets within range of nearly extinct vaquita

Availability Of Another 1581 Action

Basic Rule

- *E.g., Int'l Custom Products, Inc. v. United States*, 467 F.3d 1324 (Fed. Cir. 2006)
 - Reversed and remanded with instructions to dismiss section 1581(i) claim
 - White sauce importer challenged CBP's effective revocation of advance letter
 - Importer had adequate remedy under 1581(a)
 - Delays in process do not render process "manifestly inadequate"

Availability Of Another 1581 Action

More Recently:

- *Ford Motor Company v. United States*, 688 F.3d 1319 (Fed. Cir. 2012)
 - Reversed and remanded to reinstate section 1581(i) claim
 - Importer sought refund of estimated duties pre-liquidation
 - Importer did not have adequate remedy under section 1581(a) at “time of filing”

Availability Of Another 1581 Action

Distinguishing *Ford*:

- *Chemsol, LLC v. United States*, 755 F.3d 1345 (Fed. Cir. 2014)
 - Affirmed dismissal of section 1581(i) claim
 - Importer challenged extension of statutory liquidation period for entries of citric acid from India and Dominican Republic
 - Importer had or could have adequate remedy under 1581(a)

Availability Of Another 1581 Action

- *Sunpreme Inc. v. United States*, 892 F.3d 1186 (Fed. Cir. 2018)
 - Reversed decision asserting 1581(i) jurisdiction
 - Importer argued that CBP exceeded its authority in determining that imports of solar cells from China were subject to antidumping and countervailing duties
 - Importer could have adequate remedy under section 1581(c)

Availability Of Another 1581 Action

- *Erwin Hymer Group North America, Inc. v. United States*, 930 F.3d 1370 (Fed. Cir. 2019)
 - Reversed and remanded with instructions to dismiss section 1581(i) claim
 - Importer of van-based motorhomes argued that CBP should have refunded duties following classification protest
 - Importer could have had adequate remedy under section 1581(a)

Availability Of Another 1581 Action

- *Juancheng Kangtai Chemical Company, Ltd. v. United States*, 932 F.3d 1321 (Fed. Cir. 2019)
 - Affirmed dismissal of section 1581(i) claim
 - Exporter of chlorinated isocyanurates from China really challenged final results of administrative review rather than liquidation instructions
 - Importer could have had adequate remedy under section 1581(c)

Availability Of Another 1581 Action

- *One World Technologies, Inc. v. United States*, 380 F. Supp. 3d 1300 (Ct. Int'l Trade 2019)
 - Granted preliminary injunction under section 1581(i)
 - Importer filed suit to prevent CBP from detaining imports of redesigned garage door openers alleged to infringe patent
 - No jurisdiction under section 1581(h) because importer failed to seek review pre-importation
 - Citing *Ford*, jurisdiction existed under section 1581(i) because section 1581(a) protest was not available at time of filing

Availability Of Another 1581 Action

- *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations v. United States*, No. 19-00122, 2019 WL 5692264 (Ct. Int'l Trade Nov. 4, 2019)
 - Exercising jurisdiction under section 1581(i)
 - Domestic petitioner challenged final results of expedited review of certain softwood lumber products from Canada
 - Section 1581(c) jurisdiction unavailable because 19 U.S.C. §1675 does not cover expedited reviews