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State of the Court: The United States Court of International Trade--Three Years Later

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STATE OF THE COURT: THE UNITED STATES COURT OF INTERNATIONAL TRADE—THREE YEARS LATER†

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INTRODUCTION

The general purpose of the First Annual Judicial Conference of the United States Court of International Trade was to report on the current state of the Court, to consider the business of the Court, and to ascertain means of improving the administration of justice by the Court. To this end, the Court invited persons with a keen interest in the administration of justice in the field of international trade law to participate in and contribute to the Conference. These persons included officials from the International Trade Commission, the Departments of Justice, Commerce, and Treasury, members of the bar of the Court, and representatives from business and industry.

The theme of this year's Conference was "The Customs Courts Act of 1980—Three Years Later." The Conference evaluated the impact of the Customs Courts Act of 1980 (1980 Act) upon the Court, the litigants, and the practitioners who appear before it, and those officials who administer the international trade laws of the United States. Moreover, in focusing on the role of the Court of International Trade as a national court, and as an important arm of the federal judiciary, the Conference also examined closely the progress of the Court in implementing the legislative mandate of the 1980 Act. This important legislative mandate is worthy of restatement. It is to provide persons adversely affected or aggrieved by agency actions arising out of import transactions with the same access to judicial review and judicial remedies that Congress has made available to persons aggrieved by actions of other

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 This Article is based on an address delivered at the First Annual Judicial Conference of the Court of International Trade on February 15, 1984.

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administrative agencies. This discussion of the present state of the law was more than merely retrospective. Rather, it will serve as a beginning point for future discussions of additional improvements in the administration of justice before the Court of International Trade affecting the vital area of international trade law. Of equal significance, this Conference has served as a forum for the cooperative interchange of ideas outside the confines of the courtroom so as to enhance mutual understanding between bench and bar.

THE CUSTOMS COURTS ACT OF 1980

In the words of the Honorable Peter W. Rodino, Jr., Chairman of the Committee on the Judiciary of the United States House of Representatives, and a sponsor of the Customs Courts Act of 1980:

> Congress has developed a system of courts, which is the most comprehensive in the world. These courts provide the strongest judicial safeguards of individual rights in existence today . . . . [1]

The United States Court of International Trade is an important and integral part of this federal judicial system. Its purpose is to serve the diverse interests of the international trade community, our nation, and the public at large by bringing its expertise to bear on the large number of cases having to deal with international trade.

The Court's ability to fulfill this role was greatly enhanced by the Customs Courts Act of 1980.[2] The 1980 Act reaffirmed and perfected the Article III status of the Court.[3] By virtue of that legislation, which engrafted the broad principles of administrative law and equity onto the field of international trade law, the Court became a generalist court. Senator Dennis DeConcini, a sponsor of the 1980 Act, has stated that the Act was intended to provide

> a vastly improved forum for judicial review of administrative action of government agencies dealing with importations. The provisions make it clear to those who suffer injury in this area that they may seek redress in a court, and if they are successful, the Court of International Trade will be able to afford them relief

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[1] Rodino, *Foreword* to THE UNITED STATES COURTS, THEIR JURISDICTION AND WORK (1975).

[2] Pub. L. No. 96-417, 94 Stat. 1727 (1980) (codified in scattered sections of 19 and 28 U.S.C. (1982)).

[3] *See* 28 U.S.C. § 251(a) (1982).

which is appropriate and necessary to make them whole.[4]

As the impact of international trade on the world economy has grown, so has the number of disputes among the members of the international trade community. Therefore, it is of paramount importance that the members of the international trade community familiarize themselves with the practice before the United States Court of International Trade. For the benefit of the uninitiated and for the new members of the bar of this Court, a few brief comments pertaining to the composition and authority of the United States Court of International Trade are in order.

The Court is comprised of nine judges in active service, one of whom is designated by the President to serve as Chief Judge.[5] As an Article III court, the Court of International Trade has all the powers in law and equity possessed by, or conferred by statute upon, a United States district court.[6]

Although the Court is located in New York City, it is a national court. Hence, a trial originating in the Court of International Trade may be held in any United States courthouse or federal courtroom throughout the country.[7] Additionally, the Court is authorized to hold hearings in foreign countries.[8] Apart from those special cases in which the Chief Judge may impanel a three-judge court, each case is assigned to a single judge.[9] With certain necessary exceptions, the Federal Rules of Evidence apply to all civil actions before the Court,[10] and with some modifications to accommodate the requirements of international trade law practice, the Rules of the Court of International Trade are modeled after the Federal Rules of Civil Procedure.[11]

Expanded Jurisdiction and Powers of the Court

The Customs Courts Act of 1980 provided the Court of International Trade with new and expanded jurisdiction and powers over import transactions involving the international trade laws of

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[4] 125 CONG. REC. S.18975 (daily ed. Dec. 18, 1979) (statement of Sen. DeConcini).

[5] 28 U.S.C. § 251(a),(b) (1982).

[6] *Id.* § 1546.

[7] *See* 28 U.S.C. § 256(a) (1982).

[8] *Id.* § 256(b).

[9] *Id.* § 255; *see, e.g.*, Farr Man & Co. v. United States, 544 F. Supp. 908, 909 & n.1 (Ct. Int'l Trade 1982).

[10] 28 U.S.C. § 2641(a) (1982).

[11] *See generally id.* §§ 2631-2647 (rules of procedure for Court of International Trade).

the United States. The 1980 Act followed the Trade Agreements Act of 1979 (1979 Act),[12] which substantially revised the antidumping and countervailing duty laws of the United States. After three years of experience with these two statutes, many practitioners and commentators have characterized the Court of International Trade as an "activist" court.[13] My purpose is not to evaluate that characterization. Rather, my goal is to provide a framework for analyzing the applicability of the concept of "judicial activism" to the decisions of the Court.

To understand this characterization, one must accept the premise that the concept of judicial activism defies any single definition. Chief Judge Howard T. Markey of the United States Court of Appeals for the Federal Circuit has said that " '[j]udicial [a]ctivism' may mean different things to different people. One reason is because, like beauty, it can often be found 'in the eye of the beholder.' "[14] Nevertheless, in reaching a definition of judicial activism, and deciding on its applicability to the Court of International Trade, I suggest that the admonition of Judge Frank M. Johnson, Jr. of the United States Court of Appeals for the Eleventh Circuit be heeded: "[J]udicial activism should not be equated with judicial abuse of authority."[15]

The term "activist" has been applied to the Court of International Trade in two contexts: first, as to which cases the Court will consider and, second, as to how the Court will decide the cases it chooses to consider. Since the enactment of the 1980 Act, the question of jurisdiction has been first and foremost. In this area, the Court has continually encountered two basic questions: Did Congress confer upon the Court jurisdiction over the general subject matter involved; and, if so, should the Court assume jurisdiction over the particular case or controversy, and exercise its authority and remedial powers? Virtually all of the Court's ten jurisdictional provisions, which are set forth in section 1581 of Title 28 of the United States Code, have been the subject of careful examination. There has been no doubt since the enactment of the 1980 Act that the Court possesses subject matter jurisdiction over disputes in-

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[12] Pub. L. No. 96-39, 93 Stat. 144 (1979) (codified in scattered sections of 19 U.S.C. (1982)).

[13] Legal Times, Jan. 24, 1984, at 36, col. 3.

[14] Markey, *On the Cause and Treatment of Judicial Activism*, 40 FED. B. NEWS & J. 296, (1981).

[15] Johnson, *In Defense of Judicial Activism*, 28 EMORY L.J. 901, 902 (1979).

volving importations and the international trade law of the United States. Furthermore, the Court rarely has answered the question of whether it possessed subject matter jurisdiction in the negative. When jurisdiction has been found wanting, the Court, in the interest of justice, has availed itself of its authority under 28 U.S.C. § 1584 to transfer the action to the appropriate court.[16]

In the main, the Court has focused much of its attention on establishing appropriate principles as guides to answering the second question dealing with the exercise of jurisdiction and the granting of an appropriate remedy. Of course, the Court has embraced and applied traditional legal doctrines and concepts to determine jurisdiction. Cases such as *Special Commodity Group on Non-Rubber Footwear from Brazil v. Baldridge*,[17] *Tyler v. Donovan*,[18] *Lowa, Ltd. v. United States*,[19] and *Carlingswitch, Inc. v. United States*,[20] teach that the well-established doctrines of ripeness, timeliness, primary jurisdiction, exhaustion, and failure to state a cause of action are equally applicable in the field of international trade law. Moreover, in *United States v. Digital Equipment Corp.*,[21] *United States v. Appendagez, Inc.*,[22] and *United States v. Accurate Mould Co.*,[23] the Court has had to address questions as to the nature of the proceedings, that is, whether *in rem* or *in personam*, in civil penalty actions brought pursuant to section 592 of the Tariff Act of 1930, and whether it possessed jurisdiction under 28 U.S.C. § 1582 to decide those actions.

Interpreting and Applying the Statutory Authority

In interpreting its governing statute, the Court has applied time-honored canons and principles of statutory interpretation and application. In the process, the Court has defined more precisely the metes and bounds of its jurisdictional authority. To ascertain the meaning of the specific jurisdictional provisions, the Court had to clarify and explicate the interrelationship of those provisions,

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[16] *See, e.g.*, Bar Bea Truck Leasing Co. v. United States, 546 F. Supp. 558, 566 (Ct. Int'l Trade 1982), *modified*, 713 F.2d 1563 (Fed. Cir. 1983).

[17] 575 F. Supp. 1288 (Ct. Int'l Trade 1983).

[18] 535 F. Supp. 691 (Ct. Int'l Trade 1982).

[19] 561 F. Supp. 441 (Ct. Int'l Trade 1983), *aff'd*, 724 F.2d 121 (Fed. Cir. 1984).

[20] 560 F. Supp. 46, 46-47, 50 (Ct. Int'l Trade), *aff'd*, 720 F.2d 656 (Fed. Cir. 1983).

[21] 3 Ct. Int'l Trade 52, *order vacated*, 4 Ct. Int'l Trade 83 (1982).

[22] 560 F. Supp. 50 (Ct. Int'l Trade 1983).

[23] 546 F. Supp. 567 (Ct. Int'l Trade 1982).

particularly as they relate to section 1581(i), the residual jurisdictional provision. For example, the case of *Lowa, Ltd. v. United States*[24] highlights how the Court must harmonize the mitigating principles of equity, which seek to do justice in the particular case, with the applicable doctrines of administrative law. These doctrines, however, which are founded upon a separation of powers and sound judicial administration, do not restrict the equitable powers of the Court to do justice in the particular case when warranted by exceptional circumstances. The Court, of course, must look to the existing body of equity to determine when a case may properly be regarded to require equitable intervention.[25] As the *Lowa* case illustrates, the Court will entertain jurisdiction under section 1581(i) only when the relief available under some other provision of that section which embraces the cause of action "is manifestly inadequate, or when necessary, because of special circumstances, to avoid extraordinary and unjustified delays caused by the exhaustion of administrative remedies."[26]

Finally, for the purposes of judicial review, the Court has introduced the well-established test of *Abbott Laboratories v. Gardner*[27] into the field of international trade law to determine the finality of administrative agency actions.[28] It seems clear that the Court of International Trade has actively pursued its grant of subject matter jurisdiction, but, I submit, only to further and effectuate the will of Congress as expressed in the enabling act of 1980.

How the Court will exercise its jurisdiction and remedial powers in deciding a particular case or controversy is equally important to this analysis. During its nascent years, the Court has ad-

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[24] 561 F. Supp. 441 (Ct. Int'l Trade 1983), *aff'd*, 724 F.2d 121 (Fed. Cir. 1984).

[25] *See* 28 U.S.C. § 1585 (1982). Section 1585 provides: "The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States." *Id.*; *see also* Columbia Broadcasting Sys. v. United States, 316 U.S. 407, 419-25 (1942) (administrative action may be reviewed by federal courts under their equity jurisdiction if administrative procedure does not provide an adequate remedy).

[26] 561 F. Supp. at 447 (construing United States Cane Sugar Refiners' Ass'n v. Block, 683 F.2d 399, 402 n.5 (C.C.P.A. 1982)).

[27] 387 U.S. 136 (1967).

[28] *See id.* at 141; *see also* Wear Me Apparel Corp. v. United States, 511 F. Supp. 814, 818 (Ct. Int'l Trade 1981) (action relating to merchandise in transit to United States dismissed on the grounds that no formal administrative determinations had been made as to such merchandise); Haarman & Reimer Corp. v. United States, 509 F. Supp. 1276, 1280 (Ct. Int'l Trade 1981) (action brought to challenge negative preliminary determination by International Trade Administration dismissed as unripe).

dressed a variety of issues concerning the adjudicatory, investigatory, supervisory, prosecutorial, and advisory powers of the various federal agencies and officials involved in the administrative decisionmaking process affecting importations. The result is a long line of decisions in which the Court has had to interpret and apply not one, but two new statutes. At the same time, it has attempted to resolve controversies and conflicting interests justly and equitably by fashioning a remedy appropriate to the particular case.[29]

Many important issues also have been raised in the large number of antidumping and countervailing duty cases that have been brought before the Court. These cases have provided the Court with an opportunity to examine many questions pertaining to the authority of the International Trade Administration of the Department of Commerce (ITA). These have dealt with a variety of issues: the authority of the ITA to limit the scope of a countervailing duty petition; the reviewability and divisibility of an interim determination by the ITA as to the existence of countervailing subsidy programs; the concept of a generally available subsidy; the permissibility of adjustments to fair value in a less than fair value determination; the definition of a regional industry for the purposes of the International Trade Commission's (ITC) injury determination; and the meaning of the "threat of material injury" standard.

The Court has also been called upon to assess various factors relevant to the periodic review provisions of section 751 of the Trade Agreements Act of 1979.[30] A few examples are noteworthy. In *Al Tech Specialty Steel Corp. v. United States*,[31] the Court required the ITA to verify the cost of production information submitted by a foreign manufacturer in the course of a section 751 review.[32] In *Hide-Away Creations, Ltd. v. United States*,[33] the Court held that the ITA may not publish a general notice of its intention to commence a section 751 review at some time in the future, but, rather, must publish a notice of the actual date of its

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[29] *See, e.g.*, Alberta Gas Chems., Inc. v. United States, 515 F. Supp. 780, 792 (Ct. Int'l Trade 1981); American Air Parcel Forwarding Co. v. United States, 515 F. Supp. 47, 49, 55 (Ct. Int'l Trade 1981).

[30] *See* Pub. L. No. 96-39, ch. 497, § 101, 93 Stat. 144, 175 (1979) (codified at 19 U.S.C. § 1675 (1982)).

[31] 575 F. Supp. 1277 (Ct. Int'l Trade 1983), *appeal docketed*, No. 84-774 (Fed. Cir. Jan. 23, 1984).

[32] 575 F. Supp. at 1284-85.

[33] 577 F. Supp. 1021 (Ct. Int'l Trade 1983).

initiation of the review.[34]

It is not surprising that the Court also has had to resolve a myriad of procedural questions. Some examples include the role of discovery in antidumping and countervailing duty actions reviewable on the basis of the administrative record,[35] access to confidential business information by in-house corporate counsel,[36] and who may intervene in that action.[37]

The uniqueness of these issues has not been confined to the interpretation and enforcement of the new antidumping and countervailing duty statutes. Novel questions have been presented in cases dealing with the authority of the President to impose import quotas and tariffs,[38] the remission of duties assessed for ship repairs,[39] and the payment of liquidated duties as a condition precedent to the commencement of an action in this Court.[40] Reference may also be made to the scope of the trade adjustment assistance provisions administered by the Department of Labor under the Trade Act of 1974, which authorizes financial assistance for workers, firms, and communities that are economically distressed as a result of the influx of imports.[41]

In most instances, the Court has affirmed and applied traditional doctrines and principles of administrative law and equity in resolving the complex and difficult questions that have been presented. In other cases, the Court has had to fashion novel applications to meet the needs of the particular case. In fashioning appropriate remedies, the Court of International Trade has used its new and expanded remedial powers in many cases to provide international trade litigants a fair and just resolution of their disputes.

The authority to grant equitable relief is one of the more sig-

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[34] *Id.* at 1026-28.

[35] *See* Ceramica Regiomontana, S.A. v. United States, 557 F. Supp. 593, 595-96 (Ct. Int'l Trade 1982).

[36] *See* United States Steel Corp. v. United States, 569 F. Supp. 870, 871, 873 (Ct. Int'l Trade 1983).

[37] *See* Matsushita Elec. Indus. Co. v. United States, 529 F. Supp. 664, 668 (Ct. Int'l Trade 1981).

[38] *See* United States Cane Sugar Refiners' Ass'n v. Block, 544 F. Supp. 883, 888-96 (Ct. Int'l Trade), *aff'd*, 683 F.2d 399 (C.C.P.A. 1982).

[39] *See* American Export Lines, Inc. v. United States, 496 F. Supp. 1320, 1324-26 (Cust. Ct. 1980), *rev'd sub nom.* Farrell Lines, Inc. v. United States, 657 F.2d 1214 (C.C.P.A. 1981).

[40] *See* Lowa, Ltd. v. United States, 561 F. Supp. 441, 447-48 (Ct. Int'l Trade 1983), *aff'd*, 724 F.2d 121 (Fed. Cir. 1984).

[41] *See* Woodrum v. Donovan, 544 F. Supp. 202, 208-09 (Ct. Int'l Trade 1982); 19 U.S.C. §§ 2271-2321 (1982).

nificant improvements directly attributable to the 1980 Act. As a consequence, in a series of cases the Court has carefully delineated the essential factors that must be considered in order to grant injunctive relief.[42] In doing so, the Court, of course, has had guidance from the decisions of the Supreme Court, the Court of Appeals for the Federal Circuit, and the other courts of appeals. Based upon these precedents, this Court has adopted standards that permit the exercise of sound discretion and flexibility in weighing all of the factors that must be considered in the granting or withholding of injunctive relief.

Of all the Court's new remedial powers, the power of remand perhaps has had the greatest impact on international trade litigation. Remand is a powerful tool that is not intended to encroach upon administrative functions and prerogatives. It is appropriate, however, to return a case "to the administrative body in order that it may take further action in accordance with the applicable law."[43] The exercise of the power of remand by the Court has known no jurisdictional bounds, and has been applied to a wide range of cases. For example, the Court has remanded cases to the Customs Service for the redetermination of the value of certain imported diamonds,[44] as well as for the transmission of all information adduced before the area director pertaining to an application for a custom house cartage license.[45] In antidumping and countervailing duty cases, the Court, on remand, has required the ITA to perform such tasks as recalculating the loan interest bounty obtained by a foreign manufacturer,[46] and redetermining the *ad valorem* benefit of a preferential income tax ceiling to foreign manufacturers.[47] Similarly, the ITC has had to refine its definition of a regional industry for the purpose of making its injury determination,[48] and has had to make a new determination on the revocation of an outstanding antidumping order covering imported color television

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[42] *See, e.g.*, American Air Parcel Forwarding Co. v. United States, 515 F. Supp. 47, 52 (Ct. Int'l Trade 1981); Di Jub Leasing Corp. v. United States, 505 F. Supp. 1113, 1120 (Ct. Int'l Trade 1980).

[43] Ford Motor Co. v. NLRB, 305 U.S. 364, 374 (1939).

[44] House of Adler, Inc. v. United States, 2 Ct. Int'l Trade 274, 277-78 (1981).

[45] Bar Bea Truck Leasing Co. v. United States, 546 F. Supp. 558, 566 (Ct. Int'l Trade 1982), *modified*, 713 F.2d 1563 (Fed. Cir. 1983).

[46] Michelin Tire Corp. v. United States, 2 Ct. Int'l Trade 143, 170 (1981).

[47] Carlisle Tire & Rubber Co. v. United States, 517 F. Supp. 704, 709 (Ct. Int'l Trade 1981).

[48] Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 920 (Ct. Int'l Trade 1981).

sets.[49]

The cases mentioned are only a few examples in which the Court has interpreted and applied the law in keeping with the congressional intent underlying both the 1979 and the 1980 Acts. To have been less active or less creative would have amounted to an abdication of the Court's expanded function and responsibility to provide meaningful judicial review for the international trade community.

As may be noted from all of the cases decided, the Court has devoted its energies during the past three years to the interpretation and application of two major legislative enactments that vitally affect the rights of the international trade community. In every case, the question presented required the interpretation and application of a specific statutory provision. The judicial question that had to be answered dealt with the *meaning* of the pertinent statute or term, and its *application* to the facts of the particular case. In all of its decisions the Court of International Trade has demonstrated a commitment to striking a proper balance between the interests of the executive and administrative authorities and the rights of the aggrieved parties, while, at the same time, properly considering the interests of society and the public at large.

The question presented in the interpretation and application of a new statutory provision is seldom so clear that the answer can be found simply by reading the plain language of the statute. If the specific question presented had been expressly answered in the explicit language of the statute, in all likelihood the problem would not have come before the Court; it would have been resolved at the administrative level. Indeed, problems of statutory interpretation may arise even in cases in which the statutory language seems clear.

The Court must often look to legislative history and other pertinent sources to determine the legislative purpose and intent that will cast light on the meaning of statutory language. Many of the cases presented problems that were not specifically considered by the legislature. These cases reveal the existence of a void or lacunae in the law that the Court must fill. This category represents that large area of decided cases in which it has been said that the judiciary is permitted to legislate "interstitially," that is, to fill the

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[49] Matsushita Elec. Indus. Co. v. United States, 569 F. Supp. 853, 864 (Ct. Int'l Trade 1983), *rev'd*, Nos. 84-693, 84-694, slip op. (Fed. Cir. Dec. 13, 1984).

interstices of the statute. One is reminded of Justice Holmes, who said: "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially . . . ."[50] In the face of congressional silence, the Court must "discern dispositive legislative intent by 'projecting as well as it could how the legislature would have dealt with the concrete situation if it had but spoken.' "[51]

Once legislative intent has been ascertained, the Court must apply the meaning found. Clearly, it is the function of the Court to give effect to the legislative purpose in all cases. It cannot be questioned that, in areas in which the Congress may speak with final authority, the Court must strive to implement and fulfill the legislative will and be faithful to the legislative purpose. This is precisely what the Court has attempted to do.[52]

Considering the broad range of cases and issues that have been presented to the Court over the past 3 years, it can be concluded that the Court has indeed been "active." The Court, however, has not improperly encroached upon the functions of the executive and the legislative branches. Rather, it has fulfilled its legislative mandate as an Article III court, pursuant to the governing enabling acts.

The Role of the Lawyer and the Challenge of the Future

It is appropriate at this juncture to make mention of the role of counsel, a role that includes both opportunities and responsibilities. As an advocate, counsel has an obligation to the client to present the client's case thoroughly and competently.[53] Counsel also has a responsibility to the Court in the presentation of the facts and the applicable law.[54] Indeed, counsel may have a duty to enlighten the Court on the policy ramifications and practical implications of the question presented for decision. Counsel can only fulfill these obligations by careful and painstaking preparation.

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[50] Southern Pac. Co. v. Jensen, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).

[51] District of Columbia v. Orleans, 406 F.2d 957, 958 (D.C. Cir. 1968) (quoting Chicago v. Federal Power Comm'n, 385 F.2d 629, 635 (D.C. Cir. 1967), *cert. denied*, 390 U.S. 945 (1968)), *quoted in* Asahi Chem. Indus. Co. v. United States, 548 F. Supp. 1261, 1265 (Ct. Int'l Trade 1982).

[52] *See, e.g.*, Elizabeth River Terminals, Inc. v. United States, 509 F. Supp. 517, 523-24 (Ct. Int'l Trade 1981); Mount Washington Tanker Co. v. United States, 505 F. Supp. 209, 212, 215-16 (Ct. Int'l Trade 1980), *aff'd*, 665 F.2d 340 (C.C.P.A. 1981).

[53] *See* Re, *The Lawyer as a Lawmaker*, 52 A.B.A. J. 159, 160 (1966).

[54] *Id.* at 159.

Thorough preparation is not merely an obligation owed to one's client, but is a professional responsibility incumbent upon counsel as an officer of the Court.

Although the immediate objective is the vigorous presentation of the case so that counsel may prevail, the contribution to the law and the judicial process goes beyond the success of the moment. Counsel's presentation of the case, if professionally competent, should render valuable assistance to the judge charged with the responsibility of decision.[55] Counsel must fulfill this professional obligation and contribute to the cooperative effort that must prevail between bench and bar if the adversary system is to function fairly and succeed.[56]

With the passage of the Customs Courts Act of 1980 and the Trade Agreements Act of 1979, Congress created new and expanded rights for the various segments of the international trade community. With these rights have come vast opportunities for members of the bar in the administration, enforcement, and interpretation of these statutes.[57] Because of the increased litigation arising out of the 1979 and 1980 Acts, however, several commentators have suggested that the result is an overjudicialization of the international trade laws.[58] Needless to say, the Court of International Trade does not initiate international trade litigation. Rather, it is the judicial function of the Court to implement and give effect to the legislative policy expressed in the various enactments of Congress that govern the disposition of the cases that it must decide. That legislative policy confers upon persons adversely affected or aggrieved by agency actions arising out of import transactions the same access to judicial review and judicial remedies that has been available to persons aggrieved by other agency actions. That judicial review is meaningful and is now fully available.

The 1980 Act ended the confusion and chaos which for so long plagued lawyers and litigants alike concerned with this important area of law. All of us surely agree with the words of Congressman Peter W. Rodino, Jr., who, upon the enactment of the 1980 Act,

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[55] *See* MODEL RULES OF PROFESSIONAL RESPONSIBILITY Rule 3.3 (1983).

[56] *See* Re, *supra* note 53, at 160.

[57] *See* Re, *International Trade Law and the Role of the Lawyer*, 13 CAL. W.L. REV. 363, 374-77 (1983).

[58] Ehrenhaft, *Evaluation of the Administration of the Trade Laws: A Private Practioner's Perspective*, in THE TRADE AGREEMENTS ACT OF 1979—FOUR YEARS LATER 363, 379-81 (1983).

stated that "Congress has provided the tools necessary to make judicial review of import transactions function properly for parties adversely affected by administrative decisions."[59] Significantly, he added that "[w]hether that process will do so lies within the province of the litigants, their attorneys and the Court. The challenge posed by the Customs Courts Act of 1980 is theirs to fulfill."[60]

All of us have worked diligently to meet that challenge. It can only be hoped that the accomplishments of the past three years will serve us well for the future. With these accomplishments as our foundation, thought should be given to permit the further utilization of the expertise of the Court. For example, consideration should be given to authorizing the Court to hear a broader spectrum of trade-related cases, such as forfeiture and seizure cases, cases calling for the application to imports of the federal health and safety laws, and actions by the United States to recover tonnage duties. Consideration should also be given to clarifying the application of the jurisdictional statute to disputes involving imports and the federal copyright, trademark, and patent laws. Indeed, it has also been suggested that Congress should likewise consider granting judicial review in cases involving the exports of the United States.

The best joint efforts of bench and bar are necessary if the Court is to perform its important statutory functions, and continue to serve as an effective arm of the federal judiciary. Together, bench and bar can continue to perform an invaluable public service in this important area that vitally affects the welfare of so many persons both at home and abroad.

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[59] Rodino, *The Customs Courts Act of 1980*, 26 N.Y.L. SCH. L. REV. 459, 469 (1981).
[60] *Id.*