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Customs Valuation and Customs Enforcement

GILBERT LEE SANDLER*

I. INTRODUCTION

Thomas Travis discussed the classification of imported merchandise, how rates of duty are established through the classification of merchandise, and how that classification may be changed by altering merchandise.¹ The rate of duty must be applied to the appraised value, which is the value assigned by the U.S. Customs Service (Customs) to the merchandise. I shall first address the problems involved in appraising imported merchandise and thereafter will review Customs enforcement procedures.

II. APPRAISEMENT OF IMPORTS

A. *The Statutory Scheme*

A practitioner who wishes to render advice concerning the importation of merchandise should learn to evaluate the situation as though he were a Customs Import Specialist. It is important to remember that Customs will look behind the transaction price of the merchandise in order to attain uniform appraisements of identical goods imported into the United States. For example, if Macys and Gimbels import the same type of lighted make-up mirror, these mirrors will be classified at identical rates of duty, even though the importers may pay different prices for them. It would be ideal if their value was uniform for duty assessment purposes. Customs tries not to establish competitive advantages between importers on the basis of the duty assessed, although the duty assessments may give the United States manufacturers a competitive advantage over foreign manufacturers. As between two United States importers, the value and rate of duty should remain the same. Consequently, when Customs appraises merchandise, it looks for the true market value of the imported merchandise.² Macys may have imported its lighted mir-

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1. See Travis, *Customs Classification and the Use of Foreign Trade Zones*, 11 LAW. AM. 319 (1979).

2. *United States v. Continental Fwdg. Co.*, 311 F. Supp. 956 (Cust. Ct. 1970), *aff'd.*, 463 F.2d 1129 (C.C.P.A. 1970).

rors from an unrelated, foreign company at a fair, arm's length price which may have been the market value price, that is, a wholesale price that would be available to all U.S. importers that import in the quantities that Macys does. However, Customs will scrutinize the transaction to be sure that the price was the result of an arm's length agreement.

The statutory scheme upon which the Customs Service bases its appraisements is fairly complex and lists alternative methods of appraisal. Customs can accept the transaction price as the true market value of the merchandise, or if that price is not acceptable, Customs must use alternative methods, in order of priority, to determine the fair market price of the merchandise.

There are seven different definitions which Customs uses in determining the appraised value of virtually all imports.³ To determine the priority of these definitions, Customs must first classify the merchandise under one of the two coexisting statutes. Section 1401(a) contains three bases for appraisal;⁴ this statute, passed in 1956, replaced section 1402(a), which had four bases for appraisal.⁵ The government wanted to streamline the system of appraising imported merchandise, and thought that the old methods of appraisal were too complicated and required the expenditure of too much time investigating overseas costs and pricing. In addition, these investigations were costly and caused many delays in the appraisal process.

Pending enactment of the 1956 bill, a number of U.S. manufacturers realized that if the new valuation law was adopted, a great many imports would be appraised at substantially lower values; consequently, they objected rather loudly and strenuously to the new law. A two year study was conducted to determine which commodities imported during that period would be appraised under the new law at values five percent or more below the value that would

The valuation statutes are directed toward finding the price that a willing buyer would pay and a willing seller would accept in an uncontrolled market open to all prospective purchasers. See *United States v. Alfred Kohlberg, Inc.*, 2 Cust. Ct. 849 (1939), *aff'd*, 27 C.C.P.A. 223 (1940); *Superior Merchandise v. United States*, 54 Cust. Ct. 781 (1965).

3. 19 U.S.C. §§ 1401(a)-1402 (1970). This lecturer does not discuss two other systems of appraisal used for special, limited classes of merchandise: the American Selling Price and Nominal Valuation. See 19 U.S.C. §§ 1401(a)-1402(g) (1970); T.D. 55851, 98 Treas. Dec. 258 (1963).

4. 19 U.S.C. § 1401(a) (1970).

5. 19 U.S.C. § 1402 (1970).

have been reached under the old law.⁶ These commodities comprised a list which came to be known as the "final list."⁷ As a result, a compromise was reached, such that two appraisement statutes now coexist. Any merchandise imported into the United States which appears on the final list must be appraised under the old, pre-1956 law;⁸ all other merchandise is appraised under the new law.

There have been a number of studies conducted to determine whether the final list should be repealed. Recent studies show that if merchandise on the final list were appraised under section 1401(a), it would be appraised at higher values than if the merchandise were appraised under the pre-1956 law.⁹ Despite the fact that the purpose for the final list has vanished, it has not been repealed.

If the imported merchandise is to be appraised under the pre-1956 law, there are four possible bases of appraisement: export value, foreign value, U.S. value, and cost of production.¹⁰ Export value is the freely-offered wholesale price of imported merchandise.¹¹ Foreign value is the freely-offered wholesale price for consumption in the home market of the country from which the product is exported.¹² If both of these values can be determined, Customs must appraise the merchandise at the higher of the two values.¹³

If no export value or foreign value can be ascertained, Customs will appraise the merchandise on the basis of its U.S. value. This value is computed by taking the freely-offered U.S. resale market price of the merchandise and subtracting profits (not exceeding 8%), general expenses (not exceeding 8%), any commissions (not exceeding 6%), and certain necessary expenses, such as freight, insurance, Customs duties, and brokerage fees, which an importer would be expected to incur.¹⁴ If this basis is not available, the Customs Service

6. Report to Congress by Comptroller, *General Changes Needed in U.S. Valuation System for Imported Merchandise* i, ii (1956).

7. T.D. 54521, 93 Treas. Dec. 14 (1958).

8. 19 U.S.C. § 1402 (1970).

9. Report, *supra* note 6, at 5-6. A 1965 study revealed that under section 1401(a), merchandise on the "final list" would be valued 2% lower than under methods in section 1402. A 1971 study showed the average valuation slightly higher under the Section 1401(a) valuation. Forty-eight percent of the imports were automobiles which were valued 2.2% higher by this method. The remainder of the items were valued 1.6% lower under this method. In 1973 another study was undertaken and showed little differences (40% of the list is now duty-free).

10. 19 U.S.C. § 1402 (1970).

11. 19 U.S.C. § 1402(d) (1970).

12. 19 U.S.C. § 1402(c) (1970).

13. 19 U.S.C. § 1402(a)(1) (1970).

14. 19 U.S.C. § 1402(e) (1970).

will resort to computing the value of the goods by appraising them on the basis of the cost of production. The cost of production is computed by adding the cost of materials and fabrication, general expenses (not less than 10%), profits (not less than 8%), and packaging for shipment to the United States.¹⁵

If the imported merchandise is not on the final list, it will be appraised under section 1401(a), which contains three bases for appraisal: export value, U.S. value, and constructed value.¹⁶ These bases have priority over one another in the order that they are listed. If the export value cannot be calculated, Customs will try to determine the U.S. value. Since the U.S. value is difficult to calculate, it is seldom used. The use of the U.S. value as a basis for appraisal may be advantageous, however, if an importer paid a fair, arm's length price for a product which has a depressed market value in the United States. In such a case, the U.S. value could actually be less than the export value (contract price). Therefore, the duty assessed would be lowered and the importer's losses would be reduced.

B. Assists

A typical reason for the nonexistence of an export value is that an element of value is missing. This means that one of the costs that Customs would expect a seller to incur to produce a product, or a cost used in computing the constructed value is missing. If, in the case of the lighted mirror, the molds which are used to produce the plastic case were produced in the United States and sent to the foreign manufacturer free of charge, the cost of the mold would not be reflected in the selling price to the U.S. importer. Such free aid to a foreign manufacturer is called an assist.¹⁷ This is a problem area, and when an assist occurs and goes unreported, penalties may be imposed.¹⁸

For example, in the Miami area, many companies are involved in section 807 operations,¹⁹ whereby a manufacturer sends American

15. 19 U.S.C. § 1402(f) (1970).

16. 19 U.S.C. § 1401(a) (1970).

17. The word "assist" does not appear in Customs regulations; however, a proposed definition appeared in 34 Fed. Reg. 24651 (1973). See also Dickey, *Customs: Fines, Forfeitures and Penalties*, 30 BUS. LAW. 299, 307 (1975). The costs of designs, patterns, blueprints, and molds used in the making of articles are part of the cost of production within the meaning of the Customs laws. *Troy Textiles v. United States*, 64 Cust. Ct. 654 (1970).

18. 19 U.S.C. §§ 1592, 1545 (1970). See text *infra*, at 343-45.

19. 19 U.S.C. § 1202 (807.00) (1970) reads:

807.00 Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in

components to an offshore assembly plant and the finished product is returned to the United States. It is common for the U.S. manufacturer to visit the assembly plant. If the manufacturer only checks quality control, makes sure that shipment schedules are being met, and protects his interests as an importer, he has not provided an assist. However, if he stands on the assembly line and tells somebody to change the position of his machine or to move from A to B instead of from B to A, he may have contributed an assist to the production of the imported product. In the latter case, the value of his trip and the value of his advice may be assists to the manufacturer of the goods, and Customs will want the assists quantified and reported to them as a part of the dutiable value of the goods.²⁰

C. Constructed Value

If the export value and the U.S. value cannot be computed, then Customs must look at the constructed value.²¹ Constructed value is computed by calculating the costs of material, the cost of processing or manufacturing abroad, the usual general expenses and profits, and the cost of getting the goods packed and ready for shipment to the United States.²² If the goods were produced three years ago and exported this year, the costs incurred three years ago would not be relevant to the appraisal. Customs would look to the cost that would have been incurred during a reasonable time prior to the date of exportation, necessary to complete the goods by that date.²³

In examining constructed value, one must look at the profits and general expenses the foreign seller is expected to incur. General expenses and profits, in this context, mean those amounts which are usually reflected in sales of the same general class or kind of mer-

condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except operations incidental to the assembly process such as cleaning, lubricating, and painting A duty upon the full value of the imported article, less the cost or value of such products of the United States.

20. See note 18 *supra*.

21. 19 U.S.C. § 1401(a) (1970).

22. *Id.*

23. "It is well settled that the two last named costs must be based on the costs of material and labor that would have been incurred at the latest time which would normally permit the manufacture of articles under construction for delivery on . . . the date of export." *Andy Mohan, Inc. v. United States*, 396 F. Supp. 1280, 1286 (Cust. Ct. 1975), *aff'd.*, 537 F.2d 516 (C.C.P.A. 1976).

chandise.²⁴ This is determined by looking at overhead costs of other manufacturers in the same industry and in the same exporting country. This result could be inequitable if the manufacturer next door produces the same article in greater quantities, thus incurring lower production costs than the manufacturer involved.

A major problem for importers is whether Customs will accept the invoice price as the value of the imported goods. For example, if a Japanese manufacturer of a lighted mirror has an arrangement with a U.S. importer to sell him all of the mirrors produced in Japan, and the importer is the sole distributor of the product in the United States, a special relationship exists. A Customs Import Specialist may feel that the price has been manipulated and that the appraisement should be based on something other than the invoice price. In addition, if the importing company is related to the manufacturing company, as in the case of a subsidiary or a parent company, Customs may question the validity of the invoice price.

As a routine matter under the old law, prices between purchasers and manufacturers with these special relationships were rejected as invalid for appraisal purposes.²⁵ Under the new law, Customs will appraise the merchandise at the price charged by companies with special relationships if the price fairly reflects the fair market value of the merchandise.²⁶

Traditionally, Customs has concluded that the "fair reflection" test is satisfied if the price to a selected purchaser or related company is sufficient to cover the cost of material, fabrication, general expenses, and profits.²⁷ Customs has also found export sales prices satisfactory when they are comparable to prices in the home market or to third countries, or where the relative mark-ups by the importer and exporter are of appropriate amounts.²⁸ However, these traditional tests have been rejected by the Court of Customs and Patent Appeals.²⁹

24. 19 U.S.C. § 1401(a)(d)(2) (1970).

25. *See, e.g.*, *United States v. International Fwdg. Co.*, 13 C.C.P.A. 579 (1926).

26. 19 U.S.C. § 1401(a)(f)(1)(B) (1970). *See also* *J.L. Wood v. United States*, 505 F.2d 1400 (C.C.P.A. 1974); T.D. 76-118, 10 Cust. Bull. 206 (1976).

27. *United States v. F.W. Meyers & Co., Inc.*, 306 F. Supp. 1396 (Cust. Ct. 1969), *appeal dismissed*, 57 C.C.P.A. 141 (1970).

28. *Myerson Tooth Corp. v. United States*, 313 F. Supp. 1016 (Cust. Ct. 1970); T.D. 76-118, *supra* note 26.

29. *J.L. Wood v. United States*, 505 F.2d 1400 (C.C.P.A. 1974); *D.H. Baldwin Co. and Koeller-Struss Co. v. United States*, 577 F.2d 704 (C.C.P.A. 1978).

D. Future Valuation Methods

The rejection of the traditional tests used by the Customs Service has left many people wondering what criteria will be used in the future. The only test left is whether there is some indicia of an arm's length price negotiated between the companies, that is, a price one would expect to find between unrelated companies with no special ties. If this test is met, the selected purchaser or related company's contract price can be adopted by the Customs Service as the appraisal value. The trend has been to permit Customs to accept as many contract prices between the related companies as possible.³⁰ In fact, a new Value Code may be forthcoming from the trade negotiations in Geneva. Under this new Code, the transaction price would have first priority. Next would come something called deductive value (which is like U.S. value) and computed value (which is like constructed value).³¹ The choice between deductive and computed value would be left to the importer,³² thus giving the importer the opportunity to cut duty costs as much as possible.

E. Conclusion

At present, Customs valuations are derived from two coexisting statutes. There are varied methods under which the value of imported goods may be determined, all of which rest on the premise that Customs wishes to appraise these goods in a uniform manner which will reflect the articles' fair market value. The valuation process becomes confused when Customs considers a transaction between two companies that have some sort of special relationship; but again, the ultimate test is whether the invoice price was arrived at through arm's length negotiations. Finally, there is a possibility that the Value Code negotiated at the Geneva trade talks will become effective in the United States, giving importers a greater choice in and lending more predictability to valuation considerations.

30. If it is ever possible to determine that invoice prices to a selected purchaser at wholesale fairly reflect the market value without evidence of prices in other kinds of transactions for comparison purposes, that is so only when the relations between buyer and seller are clearly set forth and are such as to warrant an inference that they deal at arm's length. *Spanexico, Inc. v. United States Customs Court*, 405 F. Supp. 1078 (Cust. Ct. 1975), *aff'd*, 542 F.2d 568 (C.C.P.A. 1976).

31. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS AND SENATE COMMITTEE ON FINANCE, MULTILATERAL TRADE NEGOTIATIONS, INTERNATIONAL CODES AGREED TO IN GENEVA, SWITZERLAND, 96th Cong., 1st Sess. 67-127 (April 12, 1979).

32. *Id.*

III. CUSTOMS ENFORCEMENT PROCEDURES

It is important to understand the substantive portions of Customs law, but it is imperative to understand the procedural aspects of Customs law. One must know how Customs collects missing information, what impact such action may have on a client, and what an attorney should do to combat problems which may arise. An attorney can only give effective advice to an importer when he fully understands the different types of notices and requests issued by the Customs Service. The practitioner does not want to dismiss or overlook an issue that is very important, nor does he want to spend too much time on a matter of little significance.

A. Customs Service Procedures

There are two Customs forms which are routine inquiries and directives: Customs Form Number Twenty-Eight (CF-28), Request for Information, and Customs Form Number Twenty-Nine (CF-29), Notice of Proposed Action. Customs Import Specialists use these forms to communicate with importers.

Generally, the receipt of these forms does not necessarily indicate that there is any type of investigation pending, but it may indicate that the Import Specialist feels that something is different about that particular import. He may feel that he is looking at a new importation, that he is looking at some odd change in entry documents which he has not experienced before, or that he needs more detailed information in order to classify or appraise the merchandise.

Typically, the CF-28 concerns a routine inquiry which should be responded to immediately. A response may be followed up with a personal meeting with the Import Specialist, but the CF-28 is generally no cause for alarm.

On the CF-29, the Import Specialist will either check the box indicating that he is *proposing* action or the box indicating that he has already *taken* action. If the Import Specialist has checked the "proposed action" box, he is usually indicating that he has been trying to get some information and cannot obtain it. If the importer cooperates and furnishes the information, the Import Specialist will usually not take the proposed action. The CF-29 gives the importer twenty (20) days to supply the Import Specialist with the desired information. If the information is difficult to obtain, the Import Specialist will give the importer some additional time to supply the information.

If the Import Specialist has checked the "action taken" box on the CF-29, he has probably issued his decision, meaning that the papers have moved to the computer room where they will go through a process which, once started, is extremely difficult to stop. The only way to stop this process is to file a protest against the subsequent liquidation notice which would ordinarily be issued to implement the decision.

If the importer will not supply the Import Specialist with the necessary information, there are alternative sources of information the Import Specialists may use. The New York Customs Office is a filter for all information gathered in all ports regarding particular types of merchandise and various manufacturers from abroad. For example, if an Import Specialist in Miami encounters a new import from Japan and is unsure about its classification or valuation, he may send a form to the New York office, indicating his opinion as to the proper classification and valuation. The New York office, which has files on the same type of merchandise, will send a comment to the Import Specialist in Miami indicating whether the office agrees or disagrees with the opinion of the Import Specialist from Miami.

Information about the costs of manufacturing in a foreign country may be obtained abroad. Customs uses its attachés stationed at U.S. embassies around the world to accumulate and verify such information. Foreign inquiries are generally reserved for important large dollar questions. However, Customs will conduct foreign inquiries in cases that are not very important if it believes that the information is only available abroad and an attaché can conduct the inquiries economically.

Customs now employs a new breed of investigators with accounting backgrounds: auditors. These investigators audit importers' records³³ and assist the Import Specialist when he deals with the more complicated types of appraisal or duty exemption areas, such as an importation under section 807.³⁴

Auditors are often employed when merchandise is appraised on the basis of constructed value. A constructed value computation requires that Customs make certain that all costs of materials and processing are included in the appraised value of the merchandise.

33. Institute for International Trade of Laredo State University, United States Tariff Items 806.30 and 807.00, October 18-19, 1977, Mr. Turek, U.S. Customs Service 58.

34. *Id.*

Verifying these values may require the examination of the business records of the importer and the foreign manufacturer or assembler. Customs has found that such review is best conducted by accountants or auditors.

The opinions rendered by the Customs auditors are strictly advisory, according to the directives issued by Customs Service Headquarters. Auditors advise the Import Specialists about what action should be taken, or they may advise a Special Agent in connection with fraud investigations. In practice, the voluminous audit reports carry great weight with the Import Specialists and Special Agents. Consequently, it is more important to try to influence the course of an audit while it is taking place instead of later attacking an unfavorable report by arguing that it is only advisory.

There is a new statute dealing with the retention of records and the authority of Customs to serve an administrative summons to produce records.³⁵ One significant provision of the new statute is a five-year requirement for the retention of all records related to imports. The record retention requirement does not apply only to importers; it applies to anyone who knowingly causes the importation of goods. Therefore, if the client supplies molds to a foreign operation and he knows that those molds will be used to produce a product that will be imported into the United States, he is required to maintain records relating to those molds for a period of five years even though he is not the importer of record.³⁶

Another significant provision of the new law provides for an administrative summons. An administrative summons for the production of records may be issued by Customs Service officials; compliance may be enforced in a federal district court by a contempt citation.³⁷

The administrative summons can be served upon third party recordholders; the statute specifically refers to customhouse brokers, attorneys, and accountants. Consequently, the attorney representing an importer must be alert to the distinction between those records which might be subject to a summons, and those records which are genuine attorney-client privileged work product records not subject to a summons.

If an importer has not received a CF-28 or CF-29 notification and is visited by a Special Agent, he may have a serious problem. A

35. 19 U.S.C.A. §§ 1508, 1509(b) (1976); 19 C.F.R. § 162.1 (1978).

36. *Id.* at § 1509(b).

37. 19 U.S.C.A. § 1509(c) (1976).

Special Agent may be called in by an Import Specialist when the specialist's office is understaffed; in such a case, the agent is engaged in a routine inquiry. However, this does not frequently occur. A Special Agent generally becomes involved in a case when it is referred to him for purposes of a criminal investigation or a civil penalty investigation. The practitioner must be very sensitive to such a situation. He must determine exactly what circumstances brought the agent into the picture and attempt to alleviate the problem.

B. Civil Penalties

The most significant of Customs' civil penalties is contained in section 1592.³⁸ Section 1592 is the area of Customs law which has received the most publicity and notoriety. It is, perhaps, the most unreasonable of all the penalty statutes enforced by the federal government. As a result of the criticism directed at section 1592, the law was amended on October 3, 1978, effective January 1, 1979.³⁹ However, the new amendment codifies a process very similar in nature to the administrative discretionary practice which flourished under the old statute.

A number of factors should be considered when dealing with Customs' civil penalties. First, section 1592 penalties apply to any kind of misstatement of fact or wilful omission in the information which is supplied to Customs in connection with an importation.⁴⁰ Even though the importer may have accurately declared the price he paid for the merchandise, the failure to disclose an assist could subject him to a civil penalty.

Second, the penalty applies whether the violation was wilful or the result of mere negligence. Until the law was amended, the penalty was the full forfeiture value of the goods without regard to the violator's degree of culpability or the amount of revenue loss.⁴¹ For example, if someone imported a million dollars worth of goods produced by a mold (an undeclared assist), and the mold was worth two thousand dollars, the penalty would have been the domestic value of the imported goods. Customs calculates the domestic value

38. 19 U.S.C. § 1592 (1970).

39. 19 C.F.R. § 171.1 (1978) *to be codified in* 19 U.S.C. § 1592 (1970), *as amended by* Act of Oct. 3, 1978, Pub. L. No. 95-410, 19 U.S.C.A. § 1592 (Supp. 1979).

40. 19 U.S.C. § 1592(a)(1) (1970).

41. *See* note 38 *supra*.

at twice the purchase price plus duty. The Customs Service would claim a two million dollars-plus civil penalty because of a small, unreported mold.

Customs has instituted a policy of mitigating penalties to a multiple of the loss of revenue. If the importer was merely negligent, the penalty would be mitigated to no greater than twice the loss of revenue; if he was grossly negligent, no more than four times the loss of revenue; and if he committed outright fraud, the penalty could be from eight to ten times the loss of revenue.⁴²

These were discretionary decisions issued by the Customs Service, and they were subject to judicial review. Under the old law, once in court, the issue was whether or not there had been a violation of the law. If there had been a violation, the only penalty was the full forfeiture value of the goods.⁴³ If an importer thought he was not in violation of the law and wished to go to court to vindicate his rights, he had to turn his back on a mitigation offer and go to court on an all-or-nothing proposition. Few importers took this route, and those who did go to court did so to test the constitutionality of the law. When the courts failed to declare the law unconstitutional, the importers would usually compromise with the Department of Justice for a penalty approximating Customs' mitigated offer.

The new law codifies this system of mitigation. It requires the Customs Service to immediately issue a penalty notice set at an amount which would approximate the mitigated penalty under the old administrative practice. The statute provides that for a wilful violation of the law, the penalty can be as high as the forfeiture value of the goods. If the importer is grossly negligent, he can be fined up to four times the loss of revenue. If he is merely negligent, he can be fined up to two times such loss.⁴⁴

An even lower maximum penalty can be obtained under the new statutory "prior disclosure" provisions. If an importer advises his attorney that he has just discovered that he should have declared certain molds to the Customs Service, or that he should have declared the commissions he pays his agent, the attorney can take steps to minimize the penalties. First, the attorney must determine if Customs is investigating his client as a potential fraud case. If there is

42. See Dickey, *supra* note 17, at 308 n.37.

43. *Sheldon & Co. v. United States*, 8 Ct. Cust. App. 215, 218 (1917).

44. 19 U.S.C.A. § 1592(c)(4) (Supp. 1979) (amending 19 U.S.C.A. § 1592(c)(4) (1976)).

no pending investigation, he will want to invoke the prior disclosure provision of the new amendment. Under this provision, if the importer disclosed the misstatements and tenders the duty within thirty days of the date of disclosure (or a longer period agreed to by Customs), the importer can limit his potential penalty to a maximum of one times the loss in revenue.⁴⁵

The last significant change in section 1592 is the provision for judicial review of the penalty imposed by the Customs Service. The chief obstacle in the past was that in order to go to court, the importer had to make a ridiculous choice, for example, between a two million dollar penalty and a four thousand dollar mitigation offer. Now the law specifically provides that once the importer is in court, the court has the authority to review all issues *de novo*, including the amount of the penalty.⁴⁶

C. Conclusion

The new amendment has changed an unreasonable law into a workable proposition. The importer has an opportunity to mitigate the penalty at the administrative stage, and the penalty assessment itself may be minimized by prior disclosure. If the penalty assessment seems excessive, the importer may contest it in a federal district court where there will be a trial *de novo* on all issues, including the alleged violation and the amount of the penalty.

45. 19 U.S.C.A. § 1592(c) (Supp. 1979).

46. 19 U.S.C.A. § 1592(e) (Supp. 1979).