

the period of continued eligibility shall not end until the last day of the calendar year next beginning after the end of the next full open enrollment period beginning after the date on which the term expires.

(2) In the event that a retired judge remains enrolled under chapter 89 of title 5 for a period of 5 consecutive years by virtue of paragraph (1) (taking into account only periods of coverage as an active judge immediately before retirement and as a retired judge pursuant to paragraph (1)), then, effective as of the day following the last day of that 5-year period—

(A) the provisions of chapter 89 of title 5 shall be applied as if such judge had satisfied the requirements of section 8905(b)(1)¹ on the last day of such period; and

(B) the provisions of paragraph (1) shall cease to apply.

(3) For purposes of this subsection, the term “open enrollment period” refers to a period described in section 8905(g)(1) of title 5.

(c) For purposes of construing and applying chapter 87 of title 5, including any adjustment of insurance rates by regulation or otherwise, a judge of the United States Court of Federal Claims in regular active service or who is retired under section 178 of this title shall be deemed to be a judge of the United States described under section 8701(a)(5) of title 5.

(Added Pub. L. 106-518, title III, §309(a), Nov. 13, 2000, 114 Stat. 2419.)

[§ 180. Repealed. Pub. L. 106-398, § 1 [[div. A], title VI, § 654(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-165]

Section, added Pub. L. 102-572, title IX, §903(a), Oct. 29, 1992, 106 Stat. 4517, related to military retirement pay for retired judges.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1999, see section 1 [[div. A], title VI, §654(c)] of Pub. L. 106-398, set out as an Effective Date of 2000 Amendment note under section 371 of this title.

[CHAPTER 9—REPEALED]

[§§ 211 to 216. Repealed. Pub. L. 97-164, title I, § 106, Apr. 2, 1982, 96 Stat. 28]

Section 211, acts June 25, 1948, ch. 646, 62 Stat. 899; Aug. 25, 1958, Pub. L. 85-755, §1, 72 Stat. 848, provided for creation of United States Court of Customs and Patent Appeals under article III of the United States Constitution and for appointment of a chief judge and four associate judges for that court.

Section 212, act June 25, 1948, ch. 646, 62 Stat. 899, provided for order of precedence of chief judge and associate judges of court.

Section 213, acts June 25, 1948, ch. 646, 62 Stat. 899; Mar. 2, 1955, ch. 9, §1(e), 69 Stat. 10; Aug. 14, 1964, Pub. L. 88-426, title IV, § 403(e), 78 Stat. 434; Aug. 9, 1975, Pub. L. 94-82, title II, §205(b)(5), 89 Stat. 422, provided for tenure and salaries of judges.

Section 214, act June 25, 1948, ch. 646, 62 Stat. 899, authorized court to hold court at such times and places as it might fix by rule.

Section 215, act June 25, 1948, ch. 646, 62 Stat. 899, provided that three judges of court constituted a quorum and that concurrence of three judges was necessary to any decision.

Section 216, act June 25, 1948, ch. 646, 62 Stat. 899, provided for filing of written opinions by Court of Customs and Patent Appeals on appeals from decisions of Patent Office and recording of those opinions in Patent Office.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

TRANSFER OF MATTERS AND PETITIONS PENDING IN UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS ON OCTOBER 1, 1982

For provisions that any matter pending before the United States Court of Customs and Patent Appeals on Oct. 1, 1982, and that any petition for rehearing, reconsideration, alteration, modification, or other change in any decision of the United States Court of Customs and Patent Appeals rendered prior to Oct. 1, 1982, that has not been determined on that date or that is filed after that date, be determined by the United States Court of Appeals for the Federal Circuit, see section 403(b), (c) of Pub. L. 97-164, formerly set out as a note under section 171 of this title.

CHAPTER 11—COURT OF INTERNATIONAL TRADE

Sec.	
251.	Appointment and number of judges; offices.
252.	Tenure and salaries of judges.
253.	Duties of chief judge.
254.	Single-judge trials.
255.	Three-judge trials.
256.	Trials at ports other than New York.
257.	Publication of decisions.
258.	Chief judges; precedence of judges.

HISTORICAL AND REVISION NOTES

The “Board of General Appraisers” was designated “United States Customs Court” by act May 28, 1926, ch. 411, §1, 44 Stat. 669. General provisions concerning such court were incorporated in section 1518 of title 19, U.S.C., 1940 ed., Customs Duties, until amended by act October 10, 1940, ch. 843, §1, 54 Stat. 1101, adding a new section to the Judicial Code of 1911, when they were transferred to section 296 of title 28, U.S.C., 1940 ed. They are retained in title 28 by this revision.

In this connection former Congressman Walter Chandler said, “Among the major subjects needing study and revision are special courts, such as the Customs Court, which should be fitted into the judicial system.” (See U.S. Law Weekly, Nov. 7, 1939.)

HISTORY OF COURT

The United States Customs Court [now Court of International Trade] as “constituted on June 17, 1930”, consisted of nine members as provided by act Sept. 21, 1922, ch. 356, title IV, §518, 42 Stat. 972, which established the Board of General Appraisers, designated the “United States Customs Court” by act May 28, 1926, ch. 411, §1, 44 Stat. 669.

Provisions similar to these were contained in act Sept. 21, 1922, ch. 356, title IV, §518, 42 Stat. 972. That section was superseded by section 518 of the Tariff Act of 1930, and was repealed by section 651 (a)(1) of said 1930 act.

The sentence in the former first paragraph as to sitting in a case previously participated in, is from act Aug. 5, 1909, ch. 6, §28, 36 Stat. 98, which combined and amended Customs Administrative Act June 10, 1890, ch. 407, §12, 26 Stat. 136, and section 31, as added by act May 27, 1908, ch. 205, 35 Stat. 406. Section 12 of the act of 1890 was expressly saved from repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989, and prior acts, but its provisions, other than the sentence above mentioned, were omitted from the Code.

Provisions for the review of decisions of Boards of General Appraisers by the Circuit Courts, made by sec-

¹ So in original. Probably should be followed by “of title 5”.

tion 15 of the Customs Administrative Act of June 10, 1890, ch. 407, were superseded by provisions for such review by the Court of Customs Appeals created by section 29 added to that act by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6. The provisions of said new section 29 were incorporated in and superseded by chapter 8 of the Judicial Code of March 3, 1911, incorporated into the Code as former chapter 8 of Title 28, Judicial Code and Judiciary.

R.S. §2608 provided for the appointment of four appraisers of merchandise, to be employed in visiting ports of entry under the direction of the Secretary of the Treasury, and to assist in the appraisal of merchandise as might be deemed necessary by the Secretary to protect and insure uniformity in the collection of the revenue from customs. It was repealed by act June 10, 1890, ch. 407, §29, 26 Stat. 141.

R.S. §2609 provided for the appointment of merchant appraisers. R.S. §2610 made every merchant refusing to serve as such appraiser liable to a penalty. Both sections were superseded by the provisions relating to appraisers and appraisements of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and subsequent acts, and were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §2945, which contained a provision similar to that of R.S. §2610, was repealed, without mention of section 2610, by said Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, and was again repealed by section 642 of act Sept. 21, 1922.

R.S. §2725, which prescribed the compensation of merchant appraisers, and section 2726, which prescribed the salary of the general appraiser at New York, were superseded by the provisions relating to general appraisers and appraisers made by the Customs Administrative Act of June 10, 1890, ch. 407, §§12, 13, 26 Stat. 136, as amended by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, §28.

R.S. §2727 fixed the salary of the four general appraisers at the sum of \$2,500 a year each, and their actual traveling expenses. It was repealed by act Feb. 27, 1877, ch. 69, 19 Stat. 246.

AMENDMENTS

1996—Pub. L. 104-317, title V, §501(b)(3), Oct. 19, 1996, 110 Stat. 3856, substituted “Duties of chief judge” for “Duties of chief judge; precedence of judges” in item 253 and added item 258.

1980—Pub. L. 96-417, title V, §501(2), Oct. 10, 1980, 94 Stat. 1742, substituted “COURT OF INTERNATIONAL TRADE” for “CUSTOMS COURT” in chapter heading.

1970—Pub. L. 91-271, title I, §123(a), June 2, 1970, 84 Stat. 282, substituted “Single-judge trial” for “Divisions; powers and assignments” in item 254 and “Three-judge trials” for “Publication of decisions” in item 255 and added items 256 and 257.

§ 251. Appointment and number of judges; offices

(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

(b) The offices of the Court of International Trade shall be located in New York, New York. (June 25, 1948, ch. 646, 62 Stat. 899; July 14, 1956, ch. 589, §1, 70 Stat. 532; Pub. L. 96-417, title I, §101, Oct. 10, 1980, 94 Stat. 1727; Pub. L. 104-317, title V, §501(b)(1), Oct. 19, 1996, 110 Stat. 3856.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §296 (Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101).

This section contains only a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 252, 253, 254, 455, 1581, 2071, 2639, and 2640 of this title.

The provision that vacancies should be filled by appointment of the President and confirmed by the Senate was omitted as unnecessary in view of the language of the revised section.

Words “a court of record known as” were added. (See Reviser’s Note under section 171 of this title.)

The term “chief judge” was substituted for “presiding judge.” (See reviser’s note under section 136 of this title.)

The provisions of such section 296 of title 28, U.S.C., 1940 ed., relating to assignment and powers of retired judges were omitted as covered by sections 294 and 296 of this title.

Changes in phraseology were made.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104-317 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.”

1980—Subsec. (a). Pub. L. 96-417 incorporated first par. in provisions designated subsec. (a), redesignated the United States Customs Court as the United States Court of International Trade, and deleted “appointed” before “shall be”.

Subsec. (b). Pub. L. 96-417 added subsec. (b) and struck out a second paragraph requiring the President to designate from time to time one of the judges to act as chief judge.

Subsec. (c). Pub. L. 96-417 designated third par. as subsec. (c) and substituted “Court of International Trade” for “court” and “located in New York, New York” for “located at the port of New York”.

1956—Act July 14, 1956, declared the Customs Court to be a court established under article III of the Constitution of the United States.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 701 of Pub. L. 96-417, as amended by Pub. L. 96-542, §1, Dec. 17, 1980, 94 Stat. 3209, provided that:

“(a) Except as otherwise provided in this section, the provisions of and amendments made by this Act [see section 1 of Pub. L. 96-417, set out as a Short Title of 1980 Amendment note under section 1 of this title] shall take effect on November 1, 1980 and shall apply with respect to civil actions pending on or commenced on or after such date.

“(b)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the effective date of this Act [Nov. 1, 1980]:

“(A) Sections 1581(d), 1581(g), 1581(h), 1581(i), and 1583, as amended by section 201 of this Act.

“(B) Sections 2631(d), 2631(g), 2631(h), 2631(i), 2631(j), 2632(a), 2635, 2636, 2637(c), 2639(b), 2640(a)(5), 2640(c), 2640(d), 2643(a), 2643(c)(2), 2643(c)(4), and 2644, as amended by section 301 of this Act.

“(C) Section 1876, as added by section 302(a) of this Act.

“(D) Sections 2601 and 2602, as amended by section 403 of this Act.

“(E) Section 1919, as amended by section 510 of this Act.

“(F) Section 1963A, as added by section 511(a) of this Act.

“(2) Sections 337(c) and 641(b) of the Tariff Act of 1930 [19 U.S.C. 1337(c) and 1641(b)], as amended by sections 604 and 611 of this Act, shall apply with respect to civil

actions commenced on or after the effective date of this Act.

“(3) Section 284 of the Trade Act of 1974 [19 U.S.C. 2395], as added by section 613 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act.

“(c)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the effective date of this Act [Nov. 1, 1980]:

“(A) Sections 1582, 2639(a)(2), and 2640(a)(6), as amended by sections 201 and 301 of this Act.

“(B) Sections 1352, 1355, and 1356, as amended by sections 506, 507, and 508 of this Act.

“(2) Section 592(e) of the Tariff Act of 1930 [19 U.S.C. 1592(e)], as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the effective date of this Act.”

[Amendment of section 701 of Pub. L. 96-417, set out above, by Pub. L. 96-542 effective as of Nov. 1, 1980, see section 3 of Pub. L. 96-542, set out as a note under section 1516a of Title 19, Customs Duties.]

REFERENCES TO CERTAIN COURTS DEEMED REFERENCES TO THE UNITED STATES COURT OF INTERNATIONAL TRADE

Section 702 of Pub. L. 96-417 provided that: “Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade.”

EFFECT ON CUSTOMS COURT JUDGES

Section 703 of Pub. L. 96-417 provided that:

“(a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act [amending this section and section 293 of this title] shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act [Oct. 10, 1980].

“(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act [amending this section], shall apply to any individual serving as chief judge on or after the date of enactment of this Act [Oct. 10, 1980].”

EFFECT ON PENDING CASES

Section 704 of Pub. L. 96-417 provided that: “Nothing in this Act [see section 1 of Pub. L. 96-417, set out as a Short Title of 1980 Amendment note under section 1 of this title] shall cause the dismissal of any action commenced prior to the date of enactment of this Act [Oct. 10, 1980] under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment [Oct. 10, 1980].”

TENNESSEE VALLEY AUTHORITY LEGAL REPRESENTATION

Section 705 of Pub. L. 96-417 provided that: “Nothing in this Act [see section 1 of Pub. L. 96-417, set out as a Short Title of 1980 Amendment note under section 1 of this title] affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831 et seq.] to represent itself by attorneys of its choosing.”

LIMITATION OR ALTERATION OF JURISDICTION

Section 4 of act July 14, 1956, provided that: “Nothing contained in this Act [amending this section and sections 292, 293, and 295 of this title] shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Customs Court [now Court of International Trade] by any provision of law.”

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 25, 1948, provided in part that the provisions of this title as set out in section 1 of act

June 25, 1948, with respect to the organization of the court, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title, pursuant to his prior appointment.

§ 252. Tenure and salaries of judges

Judges of the Court of International Trade shall hold office during good behavior. Each shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 899; Mar. 2, 1955, ch. 9, §1(f), 69 Stat. 10; Pub. L. 88-426, title IV, §403(f), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94-82, title II, §205(b)(6), Aug. 9, 1975, 89 Stat. 423; Pub. L. 96-417, title V, §502, Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §296 (Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101; July 31, 1946, ch. 704, §1, 60 Stat. 716).

This section contains a part of section 296 of title 28, U.S.C., 1940 ed.. Other provisions of such section are incorporated in sections 251, 253, 254, 456, 1581, 2071, 2639, and 2640 of this title.

A provision exempting judge's salaries from section 1790 of the Revised Statutes was omitted, as such section was repealed by act Aug. 26, 1935, ch. 689, §1, 49 Stat. 864.

A provision for monthly salary payments was omitted since time of payment is a matter for administrative determination.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§351 et seq.) of Title 2, The Congress.

AMENDMENTS

1980—Pub. L. 96-417 substituted “Judges of the Court of International Trade” for “Judge of the Customs Court”.

1975—Pub. L. 94-82 substituted provision that each judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each judge shall receive a salary of \$30,000 a year.

1964—Pub. L. 88-426 increased salaries of judges from \$22,500 to \$30,000 a year.

1955—Act Mar. 2, 1955, increased salaries of judges from \$15,000 to \$22,500 a year.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

SALARY INCREASES

For adjustment of salaries of judges under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of Title 5, Government Organization and Employees.

Salaries of presiding judge and associate judges increased from \$10,000 to \$15,000 a year by act July 31, 1946, ch. 704, §1, 60 Stat. 716.

Salaries of presiding judge and associate judges increased from \$9,000 to \$10,000 a year by the Tariff Act of 1930, act June 17, 1930, ch. 497, title IV, §518, 46 Stat. 737.

§ 253. Duties of chief judge

(a) The chief judge of the Court of International Trade, with the approval of the court, shall supervise the fiscal affairs and clerical force of the court;¹

(b) The chief judge shall promulgate dockets.

(c) The chief judge, under rules of the court, may designate any judge or judges of the court to try any case and, when the circumstances so warrant, reassign the case to another judge or judges.

(June 25, 1948, ch. 646, 62 Stat. 900; Pub. L. 86-243, §3, Sept. 9, 1959, 73 Stat. 474; Pub. L. 91-271, title I, §105, June 2, 1970, 84 Stat. 276; Pub. L. 96-417, title V, §501(3), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 104-317, title V, §501(b)(2), Oct. 19, 1996, 110 Stat. 3856.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §296 (Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101).

This section contains a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 251, 252, 254, 456, 1581, 2071, 2639, and 2640 of this title.

Provision respecting recommendations for appointment, promotions, or otherwise affecting such clerical force, was omitted as unnecessary in view of section 871 of this title.

The second paragraph is partly new and conforms with similar provisions of section 136(e) of this title, relating to the chief judges of district courts.

The term "chief judge" was substituted for "presiding judge." (See Reviser's Note under section 136 of this title.)

Changes were made in phraseology and arrangement.

AMENDMENTS

1996—Pub. L. 104-317 struck out “; precedence of judges” after “chief judge” in section catchline and struck out subsecs. (d) and (e) which read as follows:

“(d) Whenever the chief judge is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the judge next in precedence who is able to act, until such disability is removed or another chief judge is appointed and duly qualified.

“(e) The chief judge shall have precedence and shall preside at any session which he attends. Other judges shall have precedence and shall preside according to the seniority of their commissions. Judges whose com-

missions bear the same date shall have precedence according to seniority in age.”

1980—Subsec. (a). Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91-271 reorganized existing provisions into lettered subsecs. (a) to (e) and made minor changes in phraseology.

1959—Pub. L. 86-243 required the chief judge to supervise the fiscal affairs and clerical force of the court, with the approval of the court.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-271 effective Oct. 1, 1970, see section 122 of Pub. L. 91-271, set out as a note under section 256 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 86-243 not to deprive Customs Court [now Court of International Trade] officers or employees of any rights, privileges, or civil service status, see section 4 of Pub. L. 86-243, set out as a note under section 871 of this title.

§ 254. Single-judge trials

Except as otherwise provided in section 255 of this title, the judicial power of the Court of International Trade with respect to any action, suit or proceeding shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

(June 25, 1948, ch. 646, 62 Stat. 900; May 24, 1949, ch. 139, §66, 63 Stat. 99; Pub. L. 91-271, title I, §106, June 2, 1970, 84 Stat. 277; Pub. L. 96-417, title V, §501(4), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §296 (Mar. 3, 1911, ch. 231, 187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101).

This section contains a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 251, 252, 253, 456, 1581, 2071, 2639, and 2640 of this title.

Words “when in the opinion of such division or judge the ends of justice so require,” which followed the phrase “grant a rehearing or retrial,” were omitted as surplusage.

The term “chief judge” was substituted for “presiding judge.” (See reviser's note under section 136 of this title.)

The phrase “petitions for remission of additional duties” was added to the first paragraph at the suggestion of the court to conform to existing practice.

Reappraisal appeals are heard by a single judge and reviewed by a division. (See sections 2631 and 2636 of this title.)

The provision of section 296 of title 28, U.S.C., 1940 ed., that the presiding judge shall designate one of the three judges of a division to preside over such division was omitted as in conflict with section 253 of this title (also taken from section 296 of title 28 U.S.C., 1940 ed.), which provides that judges shall preside according to the seniority of their commissions. The latter provision is in accord with present practice.

Changes were made in arrangement and phraseology.

1949 ACT

This amendment clarifies section 254 of title 28, U.S.C., by restoring language of the original law.

¹ So in original. The semicolon probably should be a period.

PRIOR PROVISIONS

Provisions similar to those relating to the assignment of judges to hear and determine cases, and provisions similar to those authorizing the chief judge to designate judges to hear and determine cases within the jurisdiction of the United States, formerly contained in this section, are covered by sections 255 and 256 of this title, respectively.

AMENDMENTS

1980—Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91-271 substituted in section catchline “Single-judge trials” for “Divisions; powers and assignments” and substituted provisions in text requiring the judicial power of the Customs Court with respect to any action, suit, or proceeding to be exercised by a single judge, for provisions setting forth the powers of the chief judge of the Customs Court with respect to the organization of such Court into divisions, and the assignment of judges to hear and determine pending cases.

1949—Act May 24, 1949, inserted “to hear or” before “to hear and determine” in third par.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-271 effective Oct. 1, 1970, see section 122 of Pub. L. 91-271, set out as a note under section 256 of this title.

§ 255. Three-judge trials

(a) Upon application of any party to a civil action, or upon his own initiative, the chief judge of the Court of International Trade shall designate any three judges of the court to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

(b) A majority of the three judges designated may hear and determine the civil action and all questions pending therein.

(Added Pub. L. 91-271, title I, §108, June 2, 1970, 84 Stat. 277; amended Pub. L. 96-417, title V, §501(5), Oct. 10, 1980, 94 Stat. 1742.)

PRIOR PROVISIONS

A prior section 255 was renumbered section 257 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1970, see section 122 of Pub. L. 91-271, set out as a note under section 256 of this title.

§ 256. Trials at ports other than New York

(a) The chief judge may designate any judge or judges of the court to proceed, together with

necessary assistants, to any port or to any place within the jurisdiction of the United States to preside at a trial or hearing at the port or place.

(b) Upon application of a party or upon his own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing a judge of the court to preside in an evidentiary hearing in a foreign country whose laws do not prohibit such a hearing: *Provided, however,* That an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(1) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.

(Added Pub. L. 91-271, title I, §109, June 2, 1970, 84 Stat. 277; amended Pub. L. 97-164, title I, §107, Apr. 2, 1982, 96 Stat. 28.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97-164 substituted “section 1292(d)(1) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal” for “section 1541(b) of this title, subject to the discretion of the Court of Customs and Patent Appeals as set forth in that section”.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

EFFECTIVE DATE

Section 122 of title I of Pub. L. 91-271 provided that: “(a) This title [see Short Title of 1970 Amendment note set out under section 1 of this title] shall become effective on October 1, 1970, and shall thereafter apply to all actions and proceedings in the Customs Court and the Court of Customs and Patent Appeals except those involving merchandise entered before the effective date for which trial has commenced by such effective date.

“(b) An appeal for reappraisal timely filed with the Bureau of Customs before the effective date, but as to which trial has not commenced by such date, shall be deemed to have had a summons timely and properly filed under this title. When the judgment or order of the United States Customs Court has become final in this appeal, the papers shall be returned to the appropriate customs officer to decide any remaining matters relating to the entry in accordance with section 500 of the Tariff Act of 1930, as amended [section 1500 of Title 19, Customs Duties]. A protest or summons filed after final decision on an appeal for reappraisal shall not include issues which were raised or could have been raised on the appeal for reappraisal.

“(c) A protest timely filed with the Bureau of Customs before the effective date of enactment of this Act [June 2, 1970], which is disallowed before that date, and as to which trial has not commenced by such date, shall be deemed to have had a summons timely and properly filed under this title.

“(d) All other provisions of this Act [see Short Title notes set out under section 1 of this title and section 1500 of Title 19] shall apply to appeals and disallowed protests deemed to have had summonses timely and properly filed under this section.”

§ 257. Publication of decisions

All decisions of the Court of International Trade shall be preserved and open to inspection. The court shall forward copies of each decision to the Secretary of the Treasury or his designee and to the appropriate customs officer for the

district in which the case arose. The Secretary shall publish weekly such decisions as he or the court may designate and abstracts of all other decisions.

(June 25, 1948, ch. 646, 62 Stat. 900, §255; renumbered §257 and amended Pub. L. 91-271, title I, §107, June 2, 1970, 84 Stat. 277; Pub. L. 96-417, title V, §501(6), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on section 1519 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, §519, 46 Stat. 739).

Changes in phraseology were made.

AMENDMENTS

1980—Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91-271 inserted “or his designee” after “Secretary of the Treasury,” and substituted “to the appropriate customs officer” for “the collector”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-271 effective Oct. 1, 1970, see section 122 of Pub. L. 91-271, set out as an Effective Date note under section 256 of this title.

§ 258. Chief judges; precedence of judges

(a)(1) The chief judge of the Court of International Trade shall be the judge of the court in regular active service who is senior in commission of those judges who—

- (A) are 64 years of age or under;
- (B) have served for 1 year or more as a judge of the court; and
- (C) have not served previously as chief judge.

(2)(A) In any case in which no judge of the court meets the qualifications under paragraph (1), the youngest judge in regular active service who is 65 years of age or over and who has served as a judge of the court for 1 year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no judge of the court in regular active service who has served as a judge of the court for 1 year or more, the judge of the court in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided under subparagraph (C), the chief judge serving under paragraph (1) shall serve for a term of 7 years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge.

(B) Except as provided under subparagraph (C), a judge of the court acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge meets the qualifications under paragraph (1).

(C) No judge of the court may serve or act as chief judge of the court after attaining the age of 70 years unless no other judge is qualified to serve as chief judge under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session of the court which such judge attends. Other judges of the court shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) If the chief judge desires to be relieved of the duties as chief judge while retaining active status as a judge of the court, the chief judge may so certify to the Chief Justice of the United States, and thereafter the chief judge of the court shall be such other judge of the court who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform the duties as such, such duties shall be performed by the judge of the court in active service, able and qualified to act, who is next in precedence.

(Added Pub. L. 104-317, title V, §501(a), Oct. 19, 1996, 110 Stat. 3855.)

CONTINUANCE OF POSITION OF CHIEF JUDGE

Section 501(c) of Pub. L. 104-317 provided that:

“(1) Notwithstanding the provisions of section 258(a) of title 28, United States Code (as added by subsection (a) of this section), the chief judge of the United States Court of International Trade who is in office on the day before the date of enactment of this Act [Oct. 19, 1996] shall continue to be such chief judge on or after such date until any one of the following events occurs:

“(A) The chief judge is relieved of his duties under section 258(c) of title 28, United States Code.

“(B) The regular active status of the chief judge is terminated.

“(C) The chief judge attains the age of 70 years.

“(D) The chief judge has served for a term of 7 years as chief judge.

“(2) When the chief judge vacates the position of chief judge under paragraph (1), the position of chief judge of the Court of International Trade shall be filled in accordance with section 258(a) of title 28, United States Code.”

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec.	
291.	Circuit judges.
292.	District judges.
293.	Judges of the Court of International Trade.
294.	Assignment of retired justices or judges to active duty. ¹
295.	Conditions upon designation and assignment.
296.	Powers upon designation and assignment.
297.	Assignment of judges to courts of the freely associated compact states.

AMENDMENTS

1988—Pub. L. 100-702, title X, §1022(2), Nov. 19, 1988, 102 Stat. 4673, added item 297.

1982—Pub. L. 97-164, title I, §110(c), Apr. 2, 1982, 96 Stat. 29, substituted “the Court of International Trade” for “other courts” in item 293.

1958—Pub. L. 85-755, §8, Aug. 25, 1958, 72 Stat. 850, substituted “Judges of other courts” for “Circuit or district judges to Court of Customs and Patent Appeals” in item 293.

§ 291. Circuit judges

(a) The Chief Justice of the United States may, in the public interest, designate and assign

¹ Section catchline amended by Pub. L. 85-755 without corresponding amendment of analysis.