Circuit. *Norcal/Crosetti Foods, Inc.* v. *U.S.*, 963 F.2d 356 (Fed.Cir. 1992) (*Norcal II*). In *Norcal II*, the court ruled on procedural grounds to reverse the judgment of the CIT and remand the case with instructions to dismiss the complaint for lack of jurisdiction. The appellate court reasoned that since the packers' had not exhausted their administrative remedies, their claims were not properly before the CIT. The court further indicated that a proper course would have been for the packers to initiate a proceeding before Customs under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516).

The 516 Petition and Agency Action (1993)

A 516 petition (the *Norcal* petition) was initiated by letters dated January 13 and January 29, 1993, and filed with Customs under 19 U.S.C. 1516 and Part 175, Customs Regulations (19 CFR Part 175). The petitioners were Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc., California packers of produce grown domestically. The International Brotherhood of Teamsters, on behalf of its Local 912, submitted a letter dated February 24, 1993, supporting the Norcal and Patterson petition. The *Norcal* petition asked Customs to reconsider its position in HRL 731830, and to adopt the findings of the CIT in *Norcal I.*

The petitioners contended that imported frozen produce is not marked in a conspicuous place in accordance with the requirements of 19 U.S.C. 1304. The petitioners argued that under a correct application of 19 U.S.C. 1304, the indication of country of origin must appear on the front panel of a package to be considered as marked in a conspicuous place. These domestic producers argued further that Customs standards for the size and prominence of such country of origin markings were not in conformity with 19 U.S.C. 1304.

Customs published a notice in the **Federal Register** on September 9, 1993 (58 FR 47413), advising the public of the petitioners' contentions and soliciting public comments on the issues raised in the petition. Also in this notice, Customs effectively suspended the effective date of T.D. 91–48 by reinstating HRL 731830. Seventy-one comments were submitted in response to the petitions.

In T.D. 94–5 (58 FR 68743, December 29, 1993), Customs issued a final interpretive ruling based on the comments which were received in response to the September 9 **Federal Register** notice. T.D. 94–5 stated that back panel marking was insufficient and front panel country of origin marking was prescribed in a specified type size and style designed to match the net weight or net quantity of contents marking of the product under the Food Labeling Regulations (21 CFR 101.105). In T.D. 94–5, Customs modified T.D. 91–48 by requiring that conspicuous marking within the meaning of T.D. 91–48, shall be limited to marking which complies with the additional specifications for type size and style set forth in T.D. 94–5. The effective date initially established for the decision in T.D. 94–5 was May 8, 1994, in order to allow importers time to modify their packaging. On March 29, 1994, however, Customs issued two **Federal Register** documents: One (59 FR 14458) suspending the compliance date of May 8, 1994, for parties adversely affected by the country of origin marking requirements specified in T.D. 94–5, and the other (59 FR 14579) giving notice of its intention to adopt a new compliance date of January 1, 1995, and soliciting comments on both the proposed compliance date and on the specifications regarding type size and style.

In response to T.D. 94–5, however, an action was filed with the Court of International Trade on behalf of American Frozen Food Institute, Inc. and National Food Processors Association, which challenged Customs decision. In *American Frozen Food Institute, Inc., et al.* v. *The United States*, Slip Op. 94–97 (June 9, 1994), the CIT ruled that because Customs had chosen to promulgate front panel marking in combination with other requirements needing APA [Administrative Procedure Act, 5 U.S.C. 553] rulemaking procedures, the entirety of T.D. 94–5 could not stand. The court stated that it expected Customs to formulate a rational rule based on comments received in connection with this matter before publishing any proposed rule.

The court further concluded that, because the full rulemaking process had not yet been followed, it would not rule on whether T.D. 94–5 was acceptable substantively. Since the court declared T.D. 94–5, in its entirety, null and void, there is no decision on the January 1993 petition filed by Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc. The decision on the 516 petition will be held in abeyance. Publication of this document is without prejudice to an ultimate decision on the 516 petition.

Issues for Consideration in Determining Whether Customs Should Issue a Notice of Proposed Rulemaking With Regard to Specific Country of Origin Marking of Frozen Produce

The Customs Service is considering issuing a notice of proposed rulemaking to amend the Customs Regulations to prescribe rules regarding a conspicuous location for the country of origin marking on packages of frozen produce and to require that such marking meet certain type size and style specifications. Although relevant comments were received in response to the **Federal Register** notices pertaining to T.D. 94–5, there are several other issues on which we would like to receive additional public comments before deciding whether to propose rulemaking on this matter. In addition to general comments, interested parties are invited to comment on the following specific issues:

(1) Is there a need for Customs to initiate a proposed rulemaking regarding country of origin marking of frozen produce?

(2) Whether there are current abuses in the country of origin marking of imported packages of frozen produce. If so, whether such abuses require that Customs prescribe country of origin marking requirements by rules applicable to all packages of frozen produce, or whether the abuses should be handled on a case-by-case basis.

(3) For purposes of the marking statute and regulations, are there sound reasons of public policy for treating frozen produce differently from produce packaged in other ways (e.g., canned goods)?

(4) Whether the front panel of frozen produce is the only ''conspicuous place'' on the package for country of origin marking.

(5) Whether a specified location on another panel (*e.g.*, the back panel) where the country of origin marking is demarcated by, for example, a box, a header, bold print, margins, a contrasting background, or other graphic devices, would constitute a ''conspicuous place'' for purposes of the marking statute.

(6) Whether Customs should prescribe, by regulation, certain type size and style specifications for the country of origin marking of frozen produce. If so, whether the regulations should specify one type size for all packages of frozen produce, or different type sizes depending upon the size of the package. If one type size is prescribed for all packages of frozen produce, what type size should be recommended and why?