

Bankruptcy Courts May Offer Relief For Tariff-Driven Distress

By **Eitan Arom** (September 8, 2025)

Months after President Donald Trump's "Liberation Day" tariff announcements, the financial distress caused by tariff uncertainty has begun to creep into major bankruptcy filings, with companies citing skyrocketing customs duties as one of the factors causing them to seek protection.[1]

These filings — dubbed "tariff bankruptcies" in this article — could well be the first in a wave of more bankruptcies to come. As companies in import-related sectors consider bankruptcy as a strategic option, how the Bankruptcy Code treats tariff duties and related issues has taken on a new importance.



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This article outlines some of the potential advantages and pitfalls of bankruptcy in the context of tariffs and other customs issues.

On the one hand, a bankruptcy filing can channel customs disputes to the bankruptcy court, which offers a potentially more favorable forum than the traditional administrative and judicial avenues for resolving those disputes. Outside of bankruptcy, U.S. Customs and Border Protection has the authority to foreclose on and auction off property subject to unpaid duties; bankruptcy can transfer authority over that property to the bankruptcy court.[2]

On the other hand, the Bankruptcy Code contains certain provisions that limit how companies can restructure around customs liabilities, for example, giving priority to tariff debt and allowing collections against nondebtor sureties and other liable parties.

Whatever else happens, the case law on these questions is sure to develop in the coming years as courts face thorny questions at the intersections of these complex fields of law.

Bankruptcy provides a potentially favorable forum for tariff-related distress.

Bankruptcy provides protections to all debtors who file, but customs duties create unique issues of application.

In particular, Section 362 of the Bankruptcy Code halts actions and lawsuits against debtors; Section 542 directs the turnover of a debtor's property to the estate; and Title 28 of the U.S. Code, Section 1334, centralizes disputes involving a debtor before the bankruptcy court. Putting these together, bankruptcy generally allows companies with tariff liabilities to resolve customs disputes or issues in the bankruptcy court.

Shifting customs disputes to the bankruptcy court can provide procedural advantages that are not otherwise available.

Normally, customs issues are resolved in the Court of International Trade, or CIT, which has exclusive jurisdiction over these disputes.[3] But bankruptcy courts have jurisdiction "[n]otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district court" under Section 1334(b).[4]

Thus, bankruptcy courts can hear customs disputes so long as the disputes are related to the debtor's bankruptcy.[5] That is a low bar that is satisfied whenever the proceeding "could conceivably have any effect on the estate," according to the U.S. Supreme Court's 1995 decision in *Celotex Corp. v. Edwards*. [6]

Moving customs disputes to bankruptcy court can allow debtors to bypass procedural hurdles they would face in the CIT, such as the requirement to exhaust administrative remedies and to prepay the disputed duties before litigating them. For example, in *In re: Apex Oil Co.*, Customs initiated proceedings to recover a rebate it had issued the debtor, which filed for bankruptcy in the interim.[7] The bankruptcy court abstained from hearing the dispute, but the U.S. District Court for the Eastern District of Missouri reversed in a 1991 decision, holding that the CIT was not "an available forum given [its] jurisdictional requirements." [8]

First, litigating in the CIT would require the debtor to exhaust its administrative remedies before Customs, while "the Bankruptcy Court can decide Customs' claim without [the debtor] exhausting its administrative remedies." [9] Second, the debtor would have had to first pay the disputed amounts before litigating in the CIT, which the debtor did not have the resources to do.[10] In light of these barriers, the court found "it is not in the interest of justice to abstain from hearing Customs' claims." [11]

Under the reasoning of *Apex Oil*, insolvent importers that cannot afford to pay customs duties before disputing them, or that face other jurisdictional hurdles in the CIT, could nevertheless bring their disputes in a bankruptcy court.

Notably, there is some risk that the bankruptcy court could abstain from the dispute. At least one court has found it proper to abstain from disputes involving the "expertise and discretion" of Customs and the CIT.[12] That 1997 opinion from the U.S. District Court for the District of Delaware, *In re: Kalvar Microfilm Inc.*, however, acknowledged the "fact-intensive nature" of the abstention analysis and noted that, unlike in *Apex Oil*, proceedings there had already been underway before Customs prebankruptcy and could be resolved expeditiously in the CIT.[13]

Finally, bankruptcy also affords protection for debtors' property in customs disputes. The automatic stay under Bankruptcy Code, Section 362, bars Customs from collecting against a debtor's goods.[14] Moreover, bankruptcy bars Customs from foreclosing on and auctioning off imported goods to pay customs liabilities.

In *In re: National Safe Center Inc.*, the debtor filed for bankruptcy the day before Customs was set to auction off its goods to satisfy unpaid customs duties.[15] The U.S. Bankruptcy Court for the District of Hawaii blocked the sale, holding that the property must be surrendered to the bankruptcy estate under Section 542.

Citing the U.S. Supreme Court's 1983 decision in *U.S. v. Whiting Pools*, [16] it ruled, the "Debtor's property now held by Customs Service must be turned over to Debtor since this property constitutes property of the estate necessary to Debtor's reorganization." [17] The bankruptcy court ordered Customs "forthwith [to] turn over" the debtor's goods subject to the unpaid duties so the goods could be sold to benefit all creditors.[18]

The Bankruptcy Code places key limits on restructuring tariff debt.

While bankruptcy can be a vehicle for importers and their lenders to restructure tariff debt, certain provisions of the Bankruptcy Code limit its usefulness.

In particular, tariff debt is prioritized; can be collected from third parties like customs brokers and sureties regardless of the automatic stay; and, once paid by those third parties, does not result in the third party gaining a priority claim but rather a nonpriority, unsecured claim.

Tariff debt is prioritized ahead of general unsecured creditors.

The Bankruptcy Code affords priority to customs duties for goods imported into the country and registered with Customs within the last year.[19] Customs duties that a debtor has attempted to evade are also exempted from discharge.[20]

The priority status of tariff duties puts Customs ahead of general unsecured creditors, limiting the ability of those creditors to recover if a debtor owes significant customs liabilities. For example, suppliers or other contract counterparties to an importer facing serious customs liabilities would likely find themselves behind Customs in the priority waterfall, limiting the usefulness of bankruptcy as a tool for these creditors.

The automatic stay does not apply to third parties that are liable for customs duties.

Importers often rely on third parties to assist them in the customs process — such as customs brokers and sureties — and Customs often seeks payment from these third parties to satisfy unpaid duties.[21]

While debtors are protected by the automatic stay from collections efforts when they file bankruptcy, other third parties may not benefit from the stay. For example, the CIT held in 2001 in *U.S. v. Washington International Insurance Co.* that a surety that agreed to be jointly and severally liable for duties owed by an importer was not protected by the automatic stay when the importer filed for bankruptcy protection.[22]

Third parties that pay tariffs gain only an unsecured claim against the debtor.

When a third party does pay customs duties on an importer's behalf, that third party does not succeed to Customs' priority status but is left with a nonpriority, unsecured claim. The Bankruptcy Code provides that third parties that pay off certain priority claims against the debtor — including customs duties — do not become subrogated to those priorities.[23]

Thus, entities that pay customs duties on a debtor's behalf do not step into Customs' shoes as far as recovering those duties from the debtor on a priority basis.[24] Instead, third parties that pay customs duties owing by a debtor do so only at their own peril.

Conclusion

The Bankruptcy Code and the customs laws interact in complex ways that make bankruptcy a powerful but limited tool for dealing with tariff-related financial distress. These considerations are, of course, only some of the factors a company should consider in deciding whether to file for bankruptcy protection. In any case, this area of law will likely continue to develop in the coming months as tariff bankruptcies make their way through the court system.

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[1] E.g., First Day Declaration, In re: Lion Ribbon Texas Corp., No. 25-90164, D.I. 21 ¶30 (Bankr. S.D. Tex.) (consumer crafting and gift-packaging business citing "challenges due to the trade tariffs imposed on imported goods" resulting in "increased operational costs" and "uncertainty"); First Day Declaration, In re: Sunnova Energy Int'l, No. 25-90160, D.I. 17 ¶7 (Bankr. S.D. Tex.) (rooftop-solar company experienced "industry-specific pressures and macroeconomic headwinds" that include "economic volatility, above-target inflation, prolonged high interest rates, and more recently, tariffs"; First Day Declaration, In re: Marelli Auto. Lighting USA LLC, No. 25-11034-BLS. D.I. 20 ¶59 (Bankr. D. Del.) (global auto-parts maker specializing in just-in-time delivery "was severely affected by tariffs due to its import/export-focused business"); First Day Declaration, In re: At Home Group, No. 25-11120, D.I. 4 ¶8 (Bankr. D. Del.) (home décor brand citing "Liberation Day" uncertainty).

[2] Much of the case law cited in this article predates the 2003 governmental reorganization that dissolved the U.S. Customs Service and created, among other divisions, U.S. Customs and Border Protection. This article uses "Customs" to refer both to the pre-2003 U.S. Customs Service and to U.S. Customs and Border Protection, as appropriate.

[3] See 28 U.S.C. §1581(a).

[4] Id. §1334(b).

[5] Id.; see, e.g., Bousa Inc. v. United States, 17 C.I.T. 568, 569 (1993) ("These [customs] actions appear to be within the jurisdiction of the bankruptcy court pursuant to 28 U.S.C. §1334(b) (1993), notwithstanding the exclusive jurisdiction of this Court to resolve [such] disputes under 19 U.S.C. § 1581(a) (1993).").

[6] Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995) (emphasis and citation omitted).

[7] 131 B.R. 712, 713-14 (E.D. Mo. 1991).

[8] Id. at 715-16.

[9] Id. at 716.

[10] Id. (citing 28 U.S.C. §2637(a)).

[11] Id.

[12] In re: Kalvar Microfilm, Inc., 208 B.R. 819, 822-23 (Bankr. D. Del. 1997).

[13] Id. at 824.

[14] E.g., *United States v. Sentry Ins.*, 980 F. Supp. 481, 484 (Ct. Int'l Trade 1997), *aff'd*, 194 F.3d 1328 (Fed. Cir. 1999). Although there appears to be little case law on the subject, efforts to liquidate customs liability could fall within the "police powers" exception to the automatic stay. 11 U.S.C. §362(b)(4). However, efforts to enforce customs duties against the estate — for example, by auctioning off property — would likely still be stayed. See, e.g., *NLRB v. Cont'l Hagen Corp.*, 932 F.2d 828, 832 (9th Cir. 1991) ("Once the assets of the debtor are in the possession and control of the bankruptcy court, and since they constitute a fund out of which all creditors are entitled to share, enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors.").

[15] 41 B.R. 195, 195–96 (Bankr. D. Haw. 1984).

[16] *United States v. Whiting Pools*, 462 U.S. 198, 211 (1983) (holding that property seized by IRS to satisfy tax lien was property of the estate that had to be turned over to the debtor).

[17] *In re: Nat'l Safe Ctr.*, 41 B.R. at 197.

[18] *Id.*

[19] 11 U.S.C. §507(a)(8)(F). In addition, the Code affords priority to customs duties that were "liquidated or reliquidated" — meaning Customs finalized and/or debited the amount due from an importer's deposit — within one year of the petition date, as well as duties on goods entered within four years of the petition but unliquidated due to a Customs investigation. *Id.*; see Stephen T. Bobo & John P. Donahue, *The Intersection of Customs Duties and Bankruptcy*, 14 *Pratt's J. Bankr. L.* 259, 260–61 (2018) (explaining terminology).

[20] See 11 U.S.C. §1141(d)(6)(B).

[21] Bobo & Donahue, *supra* note 20, at 276 ("If an importer is unable to pay its Customs duties, then Customs often seeks to collect them from various third parties. These could include sureties, customs brokers, insiders and successors in interest.").

[22] *United States v. Wash. Int'l Ins. Co.*, 177 F. Supp. 2d 1313, 1324–25 (Ct. Int'l Trade 2001).

[23] 11 U.S.C. § 507(d).

[24] E.g., *In re: Chalk Line Mfg. Inc.*, 181 B.R. 605, 611 (Bankr. N.D. Ala. 1995) (denying priority for custom brokers who paid duties on debtor's behalf); *In re: Brickel Assocs. Inc.*, 170 B.R. 140, 143 (W.D. Wis. 1994) (same).