Legislative History of 28 U.S.C. § 1581(i)

Materials Prepared for:

"Putting the (i) in CIT: The Contours of the Court's Residual Jurisdiction"

20th Judicial Conference of the United States Court of International Trade

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* Views expressed are those of the author and not the U.S. Department of Commerce

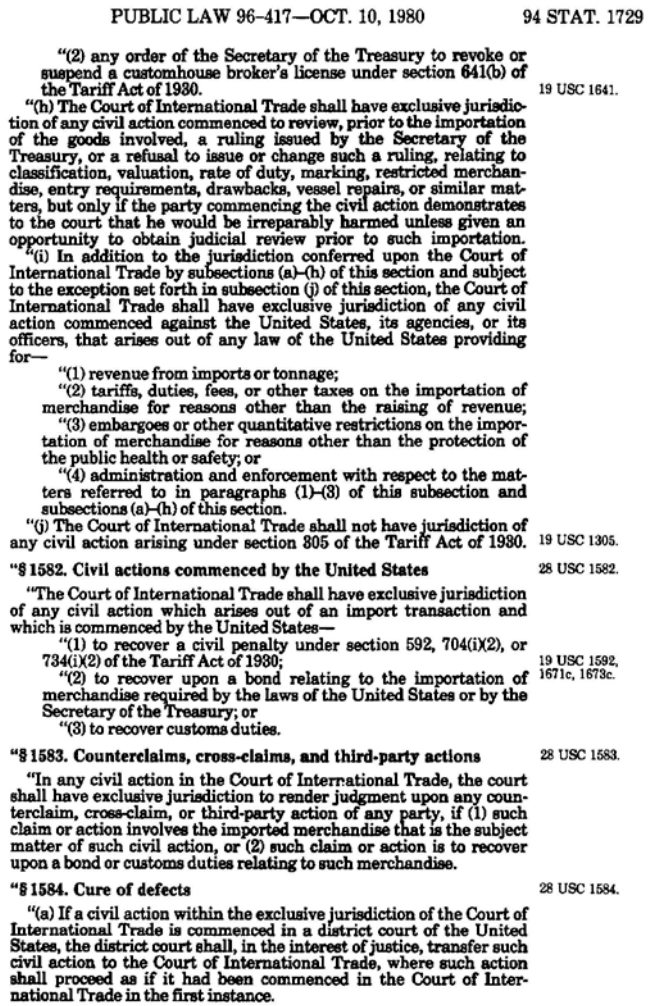
Section 1581(i), in its current form, provides as follows:

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;
(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

Section 1581(i) has its origins in the **Customs Court Act of 1980** (Public Law 96-417), which formally established the Court of the International Trade.



PUBLIC LAW 96–417—OCT. 10, 1980 94 STAT. 1729

"(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930. 19 USC 1641.

"(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

"(1) revenue from imports or tonnage;

"(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

"(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

"(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 805 of the Tariff Act of 1930. 19 USC 1305.

"§ 1582. Civil actions commenced by the United States 28 USC 1582.

"The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

"(1) to recover a civil penalty under section 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930; 19 USC 1592, 1671c, 1673c.

"(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

"(3) to recover customs duties.

"§ 1583. Counterclaims, cross-claims, and third-party actions 28 USC 1583.

"In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

"§ 1584. Cure of defects 28 USC 1584.

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

According to the House Report associated with the enacted legislation, the purpose of section 1581(i) was "to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the district courts and the Court of International Trade."

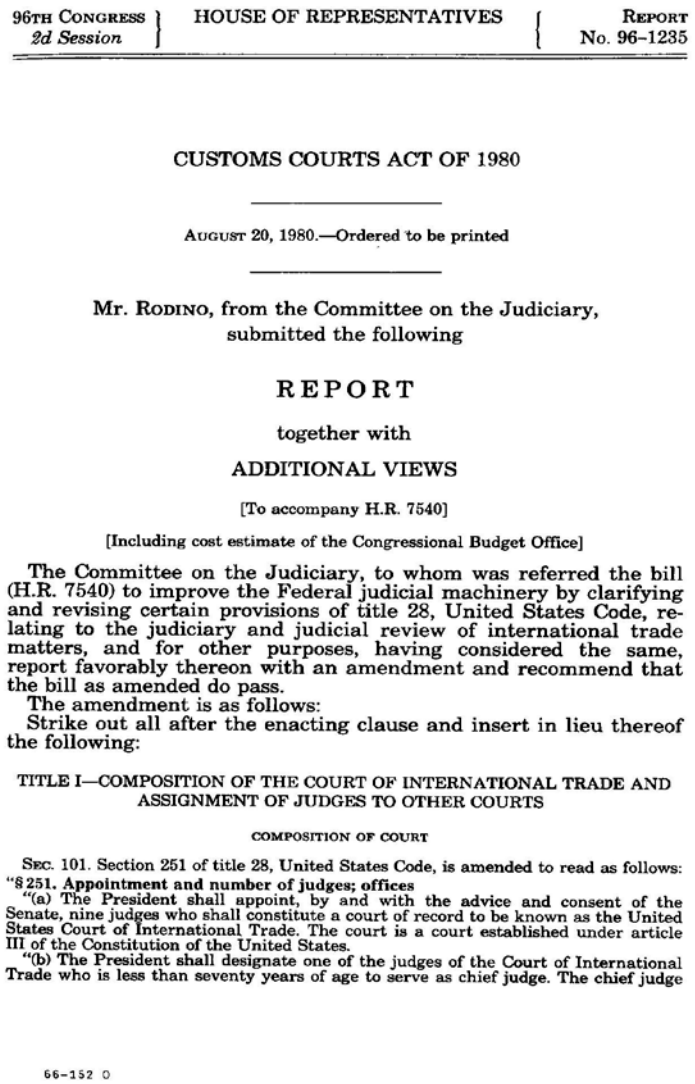
"This provision makes it clear that all suits of the type specified are properly commenced only in the Court of International Trade. The Committee has included this provision in the legislation to eliminate much of the difficulty experienced by international trade litigants who in the past commenced suits in the district courts only to have those suits dismissed for want of subject matter jurisdiction. The grant of jurisdiction in subsection (i) will ensure that these suits will be heard on their merits."

H.R. Rep. No. 96-1235 (1980) at 33, 47.

Although section 1581(i) is described as a "broad jurisdictional grant," the House Report further states:

> "[I]t is the intent of the Committee that the Court of International Trade not permit subsection (i), and in particular paragraph (4), to be utilized to circumvent the exclusive method of judicial review of those antidumping and countervailing duty determinations listed in section 516A of the Tariff Act of 1930 (19 U.S.C. § 1516a), as provided in that section. Since subsection (i) merely confers jurisdiction on the court and does not create any new causes of action, [the bill] does not change the rights of judicial review which exist under section 516A."

H.R. Rep. No. 96-1235 (1980) at 48.



96TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 96-1235

CUSTOMS COURTS ACT OF 1980

AUGUST 20, 1980.—Ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7540]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7540) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

COMPOSITION OF COURT

SEC. 101. Section 251 of title 28, United States Code, is amended to read as follows:

"§ 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. The court is a court established under article III of the Constitution of the United States.

"(b) 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

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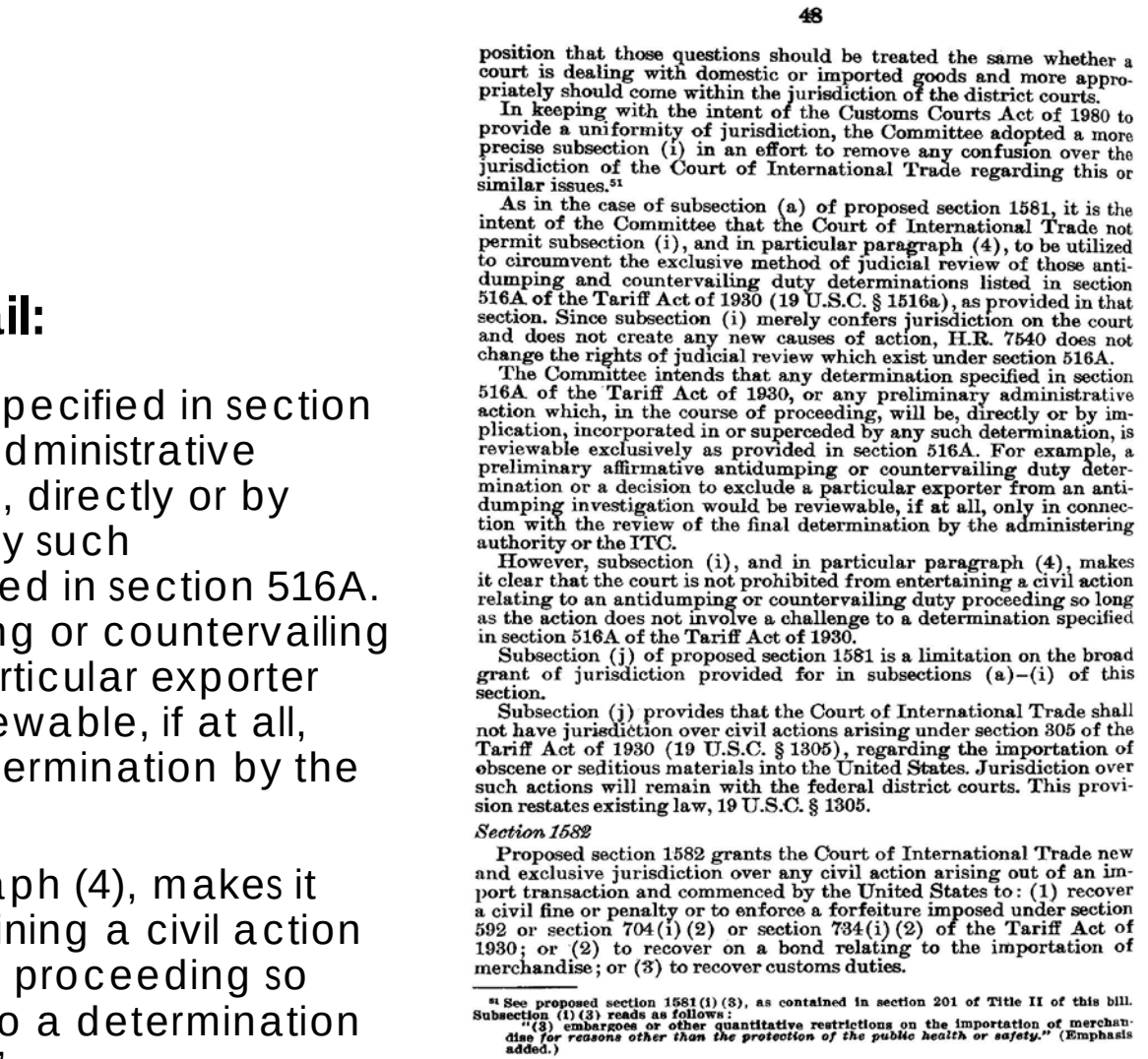
The House Report elaborates in greater detail:

"The Committee intends that any determination specified in section 516A of the Tariff Act of 1930, or any preliminary administrative action which, in the course of proceeding, will be, directly or by implication, incorporated in or superceded by any such determination, is reviewable exclusively as provided in section 516A. For example, a preliminary affirmative antidumping or countervailing duty determination or a decision to exclude a particular exporter from an antidumping investigation would be reviewable, if at all, only in connection with the review of the final determination by the administering authority or the ITC.

However, subsection (i), and in particular paragraph (4), makes it clear that the court is not prohibited from entertaining a civil action relating to an antidumping or countervailing duty proceeding so long as the action does not involve a challenge to a determination specified in section 516A of the Tariff Act of 1930."

H.R. Rep. No. 96-1235 (1980) at 48.



48

position that those questions should be treated the same whether a court is dealing with domestic or imported goods and more appropriately should come within the jurisdiction of the district courts.

In keeping with the intent of the Customs Courts Act of 1980 to provide a uniformity of jurisdiction, the Committee adopted a more precise subsection (i) in an effort to remove any confusion over the jurisdiction of the Court of International Trade regarding this or similar issues.[51]

As in the case of subsection (a) of proposed section 1581, it is the intent of the Committee that the Court of International Trade not permit subsection (i), and in particular paragraph (4), to be utilized to circumvent the exclusive method of judicial review of those antidumping and countervailing duty determinations listed in section 516A of the Tariff Act of 1930 (19 U.S.C. § 1516a), as provided in that section. Since subsection (i) merely confers jurisdiction on the court and does not create any new causes of action, H.R. 7540 does not change the rights of judicial review which exist under section 516A.

The Committee intends that any determination specified in section 516A of the Tariff Act of 1930, or any preliminary administrative action which, in the course of proceeding, will be, directly or by implication, incorporated in or superceded by any such determination, is reviewable exclusively as provided in section 516A. For example, a preliminary affirmative antidumping or countervailing duty determination or a decision to exclude a particular exporter from an antidumping investigation would be reviewable, if at all, only in connection with the review of the final determination by the administering authority or the ITC.

However, subsection (i), and in particular paragraph (4), makes it clear that the court is not prohibited from entertaining a civil action relating to an antidumping or countervailing duty proceeding so long as the action does not involve a challenge to a determination specified in section 516A of the Tariff Act of 1930.

Subsection (j) of proposed section 1581 is a limitation on the broad grant of jurisdiction provided for in subsections (a)–(i) of this section.

Subsection (j) provides that the Court of International Trade shall not have jurisdiction over civil actions arising under section 305 of the Tariff Act of 1930 (19 U.S.C. § 1305), regarding the importation of obscene or seditious materials into the United States. Jurisdiction over such actions will remain with the federal district courts. This provision restates existing law, 19 U.S.C. § 1305.

Section 1582

Proposed section 1582 grants the Court of International Trade new and exclusive jurisdiction over any civil action arising out of an import transaction and commenced by the United States to: (1) recover a civil fine or penalty or to enforce a forfeiture imposed under section 592 or section 704(i)(2) or section 734(i)(2) of the Tariff Act of 1930; or (2) to recover on a bond relating to the importation of merchandise; or (3) to recover customs duties.

[51] See proposed section 1581(i)(3), as contained in section 201 of Title II of this bill. Subsection (i)(3) reads as follows:
"(3) embargoes or other quantitative restrictions on the importation of merchandise *for reasons other than the protection of the public health or safety.*" (Emphasis added.)

The Court of International Trade has recognized the tension reflected in section 1581(i)'s legislative history, as exemplified below:

"Unfortunately, it is the legislative history that is ambiguous. While purporting to proclaim a broad jurisdictional grant to eliminate jurisdictional confusion between the district courts and the Court of International Trade, asserting § 1581(i) would ensure that international trade disputes would be heard on the merits, the legislative history simultaneously purports to restrict subsection (i), stating that it does not create any new causes of action not founded on other provisions of law.

As many litigants have discovered, the 'other' law mentioned above is not just any law touching upon international trade, but must be the kind described in paragraphs (1)-(4) of subsection (i). *See K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 188 (1988) ('Congress did not commit to the [CIT's] exclusive jurisdiction every suit against the Government challenging custom-related laws and regulations.'). The *K Mart* decision, discussed below, provides a good example of any Congress' intention that international trade litigants be able to accurately predict whether the CIT or the district courts have subject-matter jurisdiction over their cases has not been fully realized.

While this Court has, on several occasions, viewed the jurisdictional grant under § 1581(i) broadly, the Court of Appeals for the Federal Circuit and the Supreme Court have construed the jurisdictional grant under § 1581(i) rather narrowly. Those court decisions, discussed below, take the restrictive view requiring a litigant to first pursue, if at all possible, those jurisdictional avenues which are specifically delineated in subsections 1581(a)-(h). The law is clear that 'where another remedy [under § 1581(a)-(h)] *is or could have been* available, the party asserting § 1581(i) jurisdiction has the burden to show how that remedy would be manifestly inadequate.' *Miller & Co. v. United States*, 5 Fed. Cir. (T) 122, 124, 824 F.2d. 961, 963 (1987), *cert. denied*, 484 U.S. 1041 (1988) (emphasis added).

Conoco, Inc. v. United States Foreign-Trade Zones Bd., 16 C.I.T. 231, 236-237(1992) (footnotes omitted).

Section 1581(i) was amended as part of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100-449) by adding a sentence at the end deemed "necessary to implement the binational panel system under the Agreement."

> "[The provision] amends 28 U.S.C. 1581(i) to withdraw jurisdiction from the CIT over an AD or CVD determination involving Canadian merchandise which is reviewable by a binational panel. Since the precise scope of the 'residual jurisdiction' authority is unclear, in the absence of this amendment there is the risk that a litigant might seek to invoke this provision in order to circumvent the binational panel system established by new section 516A(g)."
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> H.R. Rep. No. 100-816, pt. 1 (1988) at 39.

A similar amendment was enacted in 1993 with passage of the North American Free Trade Agreement Implementation Act (Public Law 103-182).