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

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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.
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.”

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.”

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."

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).

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).”


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