

**SUMMARY OF THE PROPOSED
“UNITED STATES COURT OF INTERNATIONAL TRADE IMPROVEMENT ACT”
(September 2008)**

The proposed “United States Court of International Trade Improvement Act” is intended to improve the access to judicial review under the U.S. customs and international trade laws and expand the jurisdiction of the United States Court of International Trade.

The proposed legislation has several purposes. One is to correct jurisdictional anomalies that have come to light in case law since the Court of International Trade was created in the Customs Courts Act of 1980. A second purpose is to mesh the Court=s jurisdiction more closely with current agency procedures, notably including the widespread use of post-entry customs audits. A third purpose is to expand the Court=s jurisdiction to include more U.S. statutes governing international trade. A fourth and related purpose is to rebalance the workload in the federal judiciary by giving the Court jurisdiction over areas of the law that are logically related to its current role.

In summary, the highlights of the proposal are as follows:

- Aggrieved parties will be able to file administrative protests with U.S. Customs and Border Protection (CBP) that (1) seek the recovery of duties voluntarily tendered to CBP under customs penalty statutes or (2) contest CBP demands for duty payments after customs audits. These protest rights are designed to correspond as closely as possible to taxpayers’ existing remedies in IRS audit cases.
- Administrative protests against CBP “no load” orders issued overseas will be allowed.
- In appeals from the Court of International Trade to the U.S. Court of Appeals for the Federal Circuit in antidumping and countervailing duty cases in which the Court of International Trade applied the “unsupported by substantial evidence” or “arbitrary, capricious, or an abuse of discretion” standard, the Federal Circuit will no longer reapply the standard the lower court already applied. Instead the Federal Circuit will determine whether the Court of International Trade misapprehended or grossly misapplied the “unsupported by substantial evidence” or “arbitrary, capricious, or an abuse of discretion” standard.

- In actions seeking judicial review of prospective customs ruling letters (currently 28 USC § 1581(h)), the plaintiff will no longer be required to show that it will be irreparably injured unless pre-importation judicial review is permitted. Instead, the importer will need to show that there is “good cause” for pre-importation judicial review.
- The Court of International Trade will have jurisdiction in export control cases where judicial review is allowed under the Export Administration Act.
- The Court of International Trade’s “residual jurisdiction” (currently 28 USC § 1581(i)) will be clarified to include importer-initiated lawsuits arising from customs penalty and enforcement matters.
- The Court of International Trade’s jurisdiction in government-initiated lawsuits (28 USC § 1582) will be expanded to include (1) all CBP civil penalties rather than simply the currently enumerated penalties, (2) CBP seizures (except in narcotics cases), and (3) other government rights of action in customs and trade law such as enforcement of CBP and U.S. International Trade Commission subpoenas.
- The Court of International Trade will have statutory authority to adopt rules governing the use of alternative dispute resolution (ADR) processes. A main goal of authorizing these ADR processes is to allow the Court to address small claims in customs litigation. ADR processes would not be allowed in antidumping and countervailing duty cases, however.