

**U.S. Court of International Trade Improvements Act
Draft of June 29, 2009**

**Changes from Earlier Drafts
(June 30, 2009)**

1. A new provision (section 107 of the bill) authorizes the Commerce Department to reinstate the suspension of liquidation in antidumping and countervailing duty investigations when an order is issued, where the investigation was delayed and the suspension of liquidation expired because it exceeded the time allowed by the applicable WTO agreement.
2. A new provision (section 108 of the bill) codifies existing case law holding that (a) deemed liquidation does not apply where entries subject to antidumping or countervailing duties are not liquidated within the prescribed time period after the Commerce Department issues liquidation instructions, and (b) the Commerce Department may not issue liquidation instructions before the time for seeking judicial review has elapsed.
3. The provision (section 301 of the bill) in earlier drafts relating to trade adjustment assistance for communities has been deleted. The earlier drafts repealed the Court of International Trade's jurisdiction in such cases because trade adjustment assistance for communities had expired in 1982. The program was reinstated in the 2009 fiscal stimulus legislation, so the Court's jurisdiction should be retained.
4. The provision (section 301 of the bill) amending the Court of International Trade's grant of residual jurisdiction (currently 28 USC 1581(i), to be redesignated 1581(j)) has been rewritten. Under the new draft version, the Court's residual jurisdiction will cover actions against the United States that arise out of any federal law providing for: (1) revenue from tonnage; (2) tariffs, duties, taxes or fees on the importation or exportation of merchandise; (3) embargoes or other quantitative restrictions on the importation or exportation of merchandise; (4) any prohibition or condition on the importation or exportation of merchandise; (5) importation or exportation without otherwise applicable duties, taxes or fees, or deferral of such duties, taxes or fees; or (6) administration and enforcement with respect to matters referred to in the residual jurisdiction grant, in the remainder of section 1581, or in section 1582 (a) or (b).

Currently, the Court's residual jurisdiction extends to actions that arise out of any federal law providing for (1) revenue from imports or tonnage, (2) tariff, duties, fees, or other taxes on the importation of merchandise for reasons other than revenue, (3) embargoes or 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 matters referred to in the residual jurisdiction grant, in the remainder of section 1581.

The earlier draft of the proposed legislation would have amended current 1581(i) by deleting "for reasons other than the provision of the public health or safety" from clause (3) and by adding section 1582(a) and (b) to clause (4) relating to administration and enforcement. In addition, the earlier draft would have added an additional subsection that would have given the Court jurisdiction in an action arising out of any law set out in title 19, U.S. Code. The Senate

and House legislative counsels objected to this language because title 19 is not one of the officially codified titles of U.S. Code. The legislative counsels' proposed alternative replaced "title 19" with "the Tariff Act of 1930," but this idea omitted many trade statutes. The new proposed language of section 1581(i) was developed to avoid this objection.

5. In the amendments to 28 U.S.C. § 1582 (section 302 of the bill), new clauses have been added giving the Court of International Trade jurisdiction in government-initiated penalty cases to recovery a civil penalty arising from any prohibition or condition on the importation or exportation of merchandise, and in government-initiated seizure cases based on any provision of the Tariff Act of 1930 or any provision setting forth a prohibition on the importation or exportation of merchandise.

6. A new provision (section 303 of the bill) gives the Court of International Trade jurisdiction in actions under the federal false claims act and qui tam actions when the claims relate to any import or export transaction.