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October 27, 2008

Senator Charles Schumer
Chair, Subcommittee on Administrative Oversight and the Courts
Committee on the Judiciary
United States Senate
313 Hart Senate Office Building
Washington, DC 20510

Re: Expansion of Court of International Trade Jurisdiction

Dear Senator Schumer:

I am pleased to convey by this letter the strong support of the American Bar Association's Section of International Law ("SIL") for certain expansions of the jurisdiction of the U.S. Court of International Trade ("CIT"), set out in the proposed *Court of International Trade Improvement Act of 2008*.¹ The views expressed herein are being presented on behalf of the Section of International Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

The SIL has a longstanding interest in the effective administration of justice, by U.S. federal courts, relating to cross-border transactions and matters arising under U.S. laws regulating the conduct of international trade. To serve the needs of the bar and the public interest, the Section includes committees focused upon Customs Law, Export Controls and Economic Sanctions, and International Trade Law, among others. The policy views contained in this letter reflect careful study within the SIL and our best advice on how the administration of justice in this important area can be improved.

The CIT is a unique Article III, trial-level court of national scope having exclusive jurisdiction to review enumerated determinations of the agencies chiefly involved in regulating U.S. imports. These agencies include U.S. Customs and Border Protection; the U.S. Department of Commerce, International Trade Administration; and the U.S. International Trade Commission. The CIT also reviews Trade Adjustment Assistance determinations by the U.S. Departments of

¹ The bill in question has been developed initially by, and principally advocated by, the Customs & International Trade Bar Association ("CITBA").



Labor and Agriculture. The Court presently consists of nine judges and four senior judges. The Court fulfills, among other things, the important constitutional mandate of ensuring that customs duties are uniformly applied throughout the United States.

With its present scope of jurisdiction, the CIT is an under-utilized asset within the federal judiciary. The changes reflected in the *Court of International Trade Improvement Act of 2008* would serve the public interest by allowing the judges of the CIT to resolve certain trade-related cases currently burdening the district courts and by ensuring nation-wide uniformity in the law relating to international trade.

SIL supports both the general concept of relieving docket pressures on the District Courts through a logical expansion of the CIT's jurisdiction, and the following specific components of the proposed *Court of International Trade Improvements Act of 2008*:

- Creating new categories of decisions by U.S. Customs and Border Protection that are subject to judicial review, in the CIT, following a denied administrative protest. This would enable importers to seek judicial review of demands by Customs and Border Protection for the payment of duties; to seek refunds of excess duties voluntarily tendered to Customs; and to challenge decisions by Customs preventing the shipment of merchandise from a foreign port based on security concerns.
- Modifying the standard of review that the Court of Appeals for the Federal Circuit applies in antidumping and countervailing duty cases, to provide for greater deference to CIT decisions. This proposed change serves the interests of the efficient use of judicial resources by discouraging what today are virtually automatic appeals of trade cases to the Federal Circuit.
- Providing more meaningful judicial review of pre-importation rulings from U.S. Customs and Border Protection by replacing the "irreparable harm" standard with a "good cause" standard. Currently, importers seeking to exercise reasonable care cannot challenge a negative prospective ruling from Customs without first importing the merchandise—which is not always practical—or showing that the ruling has caused irreparable harm.
- Providing the CIT with jurisdiction over lawsuits seeking civil penalties and other enforcement actions relating to international trade. The proposal gives the CIT jurisdiction over any lawsuit commenced by the United States to enforce civil penalties under any provision of Title 19 of the U.S. Code, 28 U.S.C. 1582, and certain provisions of the export control laws.
- Providing the CIT with jurisdiction to review decisions relating to the denial of admission. Currently, the CIT does not have jurisdiction over seizures, embargoes, and quantitative restrictions on the importation of merchandise

relating to public health and safety and other issues. The proposal moves those actions from the District Courts to the CIT.

- Providing the CIT with the same powers to promote alternative dispute resolution as are currently wielded by District Courts. This change will give the CIT greater flexibility and authority to resolve cases in the most efficient way possible.

This expression of support applies to the version of the bill presently being promoted by CITBA, whose core components are specified above. The SIL supports these components of legislation respecting the CIT's jurisdiction; but this letter should not be construed as supporting other modifications to the CIT's jurisdiction that may be proposed to, or considered by, the Congress.

We appreciate your attention to these views and hope you will give the bill in question favorable consideration, beginning with prompt introduction and focused attention within the Committee on the Judiciary. Should you or your staff desire additional information on the proposed legislation or on the views set out above, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Aaron Schildhaus". The signature is written in a cursive, slightly slanted style.

Aaron Schildhaus
Section on International Law Chair, 2008-09

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October 27, 2008

REQUEST FOR BLANKET AUTHORITY

FROM: Aaron Schildhaus, Chair, Section of International Law

SUBJ: Comments on certain expansions of the jurisdiction of the U.S. Court of International Trade as set out in the proposed *Court of International Trade Improvement Act of 2008*.

OBJECTION DEADLINE: Monday, October 27, 2008; 3:00 p.m. ET

PROPOSED SUBMISSION DATE: Monday, October 27, 2008; 3:30 p.m. ET

The Section of International Law requests blanket authority to submit the attached comments on certain expansions of the jurisdiction of the U.S. Court of International Trade as set out in the proposed *Court of International Trade Improvement Act of 2008*.

The subject matter is within the primary jurisdiction and expertise of the Section of International Law. The Council approved the comments on September 27, 2008. There is no materials interest in the subject matter of this request for blanket authority on the part of any member of the Section committees that initiated the proposal or of the Section Council that approved the submission of the request by reason of specific employment or representation of clients.

Very truly yours,



Aaron Schildhaus
Section on International Law Chair, 2008-09

Cc: William C. Hubbard, Chair, ABA House of Delegates
Bernice B. Donald, ABA Secretary
Thomas Susman, Director, ABA Governmental Affairs and Public Services
Alpha Brady, Director, Policy Administration Division
All Section and Division Chairs

Attachment

