

§ 2638. New grounds in support of a civil action

In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—

- (1) applies to the same merchandise that was the subject of the protest; and
- (2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

(Added Pub. L. 96-417, title III, §301, Oct. 10, 1980, 94 Stat. 1736.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in text, is classified to section 1515 of Title 19, Customs Duties.

Section 514 of the Tariff Act of 1930, referred to in par. (2), is classified to section 1514 of Title 19.

PRIOR PROVISIONS

A prior section 2638, acts June 25, 1948, ch. 646, 62 Stat. 982; June 2, 1970, Pub. L. 91-271, title I, §119, 84 Stat. 281, related to decisions, findings of fact and conclusions of law, and effect of opinions, prior to the general revision of this chapter by Pub. L. 96-417. See section 2645 (a) and (c) of this title.

§ 2639. Burden of proof; evidence of value

(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

- (1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and
- (2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

(Added Pub. L. 96-417, title III, §301, Oct. 10, 1980, 94 Stat. 1736.)

REFERENCES IN TEXT

Sections 515, 516, and 516A of the Tariff Act of 1930, referred to in subsec. (a)(1), are classified to sections 1515, 1516, and 1516a, respectively, of Title 19, Customs Duties.

PRIOR PROVISIONS

A prior section 2639, acts June 25, 1948, ch. 646, 62 Stat. 982; June 2, 1970, Pub. L. 91-271, title I, §120, 84 Stat. 281, provided for retrial or rehearing, prior to the general revision of this chapter by Pub. L. 96-417. See section 2646 of this title.

EFFECTIVE DATE

Subsec. (a)(2) of this section applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(A) of Pub. L. 96-417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

Subsec. (b) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96-417.

§ 2640. Scope and standard of review

(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

- (1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.
- (2) Civil actions commenced under section 516 of the Tariff Act of 1930.
- (3) Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.
- (4) Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.
- (5) Civil actions commenced to review any decision of the Secretary of the Treasury under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section.
- (6) Civil actions commenced under section 1582 of this title.

(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.

(e) In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

(Added Pub. L. 96-417, title III, §301, Oct. 10, 1980, 94 Stat. 1736; amended Pub. L. 98-573, title II, §212(b)(5), Oct. 30, 1984, 98 Stat. 2984; Pub. L. 103-182, title VI, §684(a)(4), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a)(1), is classified to section 1515 of Title 19, Customs Duties.