

ment, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

(A) a copy of the contested determination and the findings or report upon which such determination was based;

(B) a copy of any reported hearings or conferences conducted by the agency; and

(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

(Added Pub. L. 96-417, title III, § 301, Oct. 10, 1980, 94 Stat. 1733; amended Pub. L. 103-182, title VI, § 684(d), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (a), (b)(1), and (c), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Tariff Act of 1930 is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of Title 19, Customs Duties. Sections 515, 516, 516A, and 777 of the Tariff Act of 1930 are classified to sections 1515, 1516, 1516a, and 1677f, respectively, of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

PRIOR PROVISIONS

A prior section 2635, acts June 25, 1948, ch. 646, 62 Stat. 981; June 2, 1970, Pub. L. 91-271, title I, § 116, 84 Stat. 280, related to burden of proof and evidence of value, prior to the general revision of this chapter by Pub. L. 96-417. See section 2639 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-182 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

“(A) the consumption or other entry and the entry summary;

“(B) the commercial invoice;

“(C) the special customs invoice;

“(D) a copy of the protest or petition;

“(E) a copy of the denial, in whole or in part, of the protest or petition;

“(F) the importer's exhibits;

“(G) the official and other representative samples;

“(H) any official laboratory reports; and

“(I) a copy of any bond relating to the entry.

“(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.”

EFFECTIVE DATE

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, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2636. Time for commencement of action

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

(d) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

(e) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

(f) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

(g) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1734; amended Pub. L. 98–573, title II, § 212(b)(4), title VI, § 623(b)(1), Oct. 30, 1984, 98 Stat. 2984, 3041; Pub. L. 103–182, title VI, § 684(a)(3), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

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

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsec. (c), is classified to section 1516a of Title 19.

Sections 223, 251, and 271 of the Trade Act of 1974, referred to in subsec. (d), are classified to sections 2273, 2341, and 2371, respectively, of Title 19, Customs Duties. Section 2371 of Title 19 was omitted from the Code as terminated Sept. 30, 1982.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (e), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1677f(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (g), is classified to section 1641 of Title 19.

Section 499(b) of the Tariff Act of 1930, referred to in subsec. (h), is classified to section 1499(b) of Title 19.

PRIOR PROVISIONS

A prior section 2636, acts June 25, 1948, ch. 646, 62 Stat. 981; June 2, 1970, Pub. L. 91–271, title I, § 117, 84 Stat. 280, related to analysis of imported merchandise, prior to the general revision of this chapter by Pub. L. 96–417. See section 2642 of this title.

AMENDMENTS

1993—Subsecs. (h), (i). Pub. L. 103–182 added subsec. (h) and redesignated former subsec. (h) as (i).

1984—Subsec. (c). Pub. L. 98–573, § 623(b)(1)(A), amended subsec. (c) generally, striking out “, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act,” and substituting “within the time specified in such section” for “within thirty days after the date of the publication of such determination in the Federal Register”.

Subsec. (d). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d), which provided that civil actions contesting certain determinations by the administering authority under sections 703(b), (c), and 733(b), (c), of the Tariff Act of 1930 were barred unless commenced in accordance with the rules of the Court of International Trade within 10 days after publication of the determination in the Federal Register, was struck out.

Subsecs. (e) to (g). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsecs. (f) to (h) as (e) to (g), respectively. Former subsec. (e) redesignated (d).

Subsec. (h). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 98–573, § 212(b)(4), amended subsec. (h) generally, substituting “customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act,” for “customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act”.

Subsec. (i). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (i) as (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 212(b)(4) of Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

Amendment by section 623(b)(1) of Pub. L. 98–573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98–573, set out as a note under section 1671 of Title 19.

EFFECTIVE DATE

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, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

APPLICATION OF 1993 AMENDMENT

For purposes of applying amendment by Pub. L. 103-182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103-182, set out as a note under section 1581 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2637. Exhaustion of administrative remedies

(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

(Added Pub. L. 96-417, title III, § 301, Oct. 10, 1980, 94 Stat. 1735.)

REFERENCES IN TEXT

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

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19.

PRIOR PROVISIONS

A prior section 2637, acts June 25, 1948, ch. 646, 62 Stat. 982; June 2, 1970, Pub. L. 91-271, title I, § 118, 84 Stat. 280; July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(4)(E), 93 Stat. 306, related to witnesses and inspection of documents, prior to the general revision of this chapter by Pub. L. 96-417. See section 2641 of this title.

EFFECTIVE DATE

Subsec. (c) 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, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 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,