

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, 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.

Section 516 of the Tariff Act of 1930, referred to in subsec. (a)(2), is classified to section 1516 of Title 19.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (a)(3), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (a)(4), is classified to section 1677(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (a)(5), is classified to section 1641 of Title 19.

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

Sections 223, 251, 271, and 284 of the Trade Act of 1974, referred to in subsec. (c), are classified to sections 2273, 2341, 2371, and 2395, respectively, of Title 19, Customs Duties. Section 2371 of Title 19 was omitted from the Code as terminated Sept. 30, 1982.

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

#### PRIOR PROVISIONS

A prior section 2640, act June 25, 1948, ch. 646, 62 Stat. 982, authorized the division which had decided a case or the single judge who had decided an appeal for a reappraisal to grant a rehearing or retrial, prior to re-

peal by Pub. L. 91-271, title I, §121, June 2, 1970, 84 Stat. 281. See section 2646 of this title.

#### AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103-182 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (a)(5). Pub. L. 98-573 amended par. (5) generally, substituting “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” for “to deny or revoke a custom-house broker’s license under section 641(a) of the Tariff Act of 1930”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE

Subsecs. (a)(5), (c), and (d) 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.

Subsec. (a)(6) 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.

#### 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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

#### § 2641. Witnesses; inspection of documents

(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or for-