

CHANGES IN EXISTING LAW MADE BY THE PROPOSED LEGISLATION  
(July-August 2013) (3d draft)

**Title 19, United States Code:**

**§ 1504. Limitation on liquidation**

...

**(d) Removal of suspension**

Except as provided in section 1675(a)(3) of this title, when a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry, unless liquidation is extended under subsection (b) of this section, within 8 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with respect to which liquidation has been extended under subsection (b) of this section) not liquidated by the Customs Service within 8 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record or (in the case of a drawback entry or claim) at the drawback amount asserted by the drawback claimant.

**§ 1505 - Payment of duties and fees**

...

*(c) Interest.* Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim is made under section 1520(d) of this title from the date on which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation, **or, in a case in which a person deposits excess money as duties, taxes, fees, or drawback overpayments under section 1520(a)(3) of this title, from the date on which the money was deposited to the date of refund of the excess.** The Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.

## § 1514 - Protest against decisions of Customs Service

(a) **Finality of decisions; return of papers.** Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), section 1520 of this title (relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to C

- (1) the appraised value of merchandise;
- (2) the classification and rate and amount of duties chargeable;
- (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
- (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title;
- (5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry, pursuant to either section 1500 or section 1504;
- (6) the refusal to pay a claim for drawback;
- (7) the refusal to reliquidate an entry under section 520(d) of this Act; or
- (8) the refusal, after written request by the tendering party, to refund money tendered as duties, taxes, fees, or penalties under section 1592 of this title or as drawback overpayments or penalties under section 1593a of this title;**

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

**(b) Protest of Penalty Claims.**

**A protest may be made of a decision under subsection (b)(2) of section 1592 or subsection (b)(2) of section 1593a of this title to issue a penalty claim and of the contents thereof following the deemed denial of a petition for remission or mitigation under section 1618 of this title.**

**(b c) Finality of Decisions**

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**(e d) Form, number, and amendment of protest; filing of protest**

(1) A protest of a decision made under subsection (a) **or (b)** of this section shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

- (A) each decision described in subsection (a) **or (b)** of this section as to which protest is made;
- (B) each category of merchandise affected by each decision set forth under paragraph (1);
- (C) the nature of each objection and the reasons therefor; and
- (D) any other matter required by the Secretary by regulation.

...

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category, **and where a penalty claim is made with respect to an entry, a separate protest may be filed with respect to that claim under subsection (b) above.** In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 3332 of this title, that is the subject of a protest are deemed to be part of a single protest. Unless a request for accelerated disposition is filed under section 1515 (b) of this title, a protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) of this section which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 1485(d) and 1557(b) of this title,

protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by C

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback;

(E) with respect to a determination of origin under section 3332 of this title, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise;

**(F) any person seeking the refund of money tendered as duties, taxes, fees, drawback overpayments, or penalties under sections 1592 or 1593a of this title;**

**(G) with respect to protest under subsection (b) of this section, any person who is the subject of a penalty claim under subsection(2)(b) of section 1592 or 1593a of this title; or**

**(H)** any authorized agent of any of the persons described in clauses (A) through **(G)**.

(3) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

**A protest under subsection (b) of this section shall be filed within 180 days after but not before the date the protesting party's petition for remission or mitigation under section 1618 of this title is deemed denied.**

**§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings**

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**(c) Liquidation of entries**

**(1) Liquidation in accordance with determination**

Unless such liquidation is enjoined by the court or suspended under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

**(2) Suspension of liquidation and injunctive relief**

**(A) Suspension of Liquidation.**

**(i) In the case of a determination described in clause (iii) of subsection (a) (2) (B) of this section for which judicial review is requested under this section, liquidation of the entry of merchandise that is covered by the action is suspended and the administering authority shall not issue liquidation instructions to U.S. Customs and Border Protection under section 1675 (a) (3) (B) of this Title for those entries pending the final disposition by the court, including all appeals. A plaintiff must provide in its complaint the following information: (a) the name of the requestor, (b) the requestor's status as a party to the underlying proceeding and as a party to the appeal; and (c) the specific entries to be suspended by name of manufacturer, producer, exporter, or U.S. importer. In addition, the plaintiff must aver that it has consulted with the administering authority regarding the information provided in clauses (a) through (c) of the preceding sentence, or that it has good cause for failing to consult. Failure to provide this information will result in automatic dissolution of the suspension of liquidation.**

**(ii) The court may order the administering authority to lift the suspension of liquidation before the final decision by the court, upon request by a party for such relief and a showing that the requested relief should be granted under the circumstances.**

**(B) Injunctive Relief.** In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, **the liquidation of which was not suspended as provided in (A) of this subsection**, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

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**(e) Liquidation in accordance with final decision**

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined **or suspended** under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision. **Any liquidation not in accordance with the court decision is contrary to law. The Court will grant appropriate relief to correct any liquidation not in accordance with its decision or not completed in a reasonable time. Customs and Border Protection inform the administering authority of the rate of liquidation for entries enjoined or suspended. The administering authority will inform the parties to the Court action of the rate of liquidation within eight months of issuance of the final court decision pursuant to 19 USC 1677f(c).**

**§ 1520. Refunds and errors**

**(a) Cases in which refunds authorized**

The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) *Excess deposits.* Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.

(2) *Fees, charges, and exactions.* Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected.

(3) *Fines, penalties, and forfeitures.* Whenever money **(including money deposited as duties, taxes, fees, or drawback overpayments in connection with a penalty)** has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(4) *Prior to liquidation.* Prior to the liquidation of an entry or reconciliation, whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid.

## **Sec. 1618 Remission or Mitigation of Penalties**

**(a)** Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

**(b) A request for accelerated disposition of a petition for remission or mitigation of a penalty under section 1592 or 1593a of this title may be filed at any time concurrent with or following the filing of such a petition. In any case in which the Secretary of the Treasury or the Commissioner of Customs does not issue a decision in response to such a petition within sixty (60) days after receiving a request for accelerated disposition, the petition shall be deemed to have been denied and the**

**penalty claim under section 1592(b)(2) or 1593a(b)(2) shall be subject to protest under section 1514(b) of this title.**

**Sec. 1675. Administrative review of determinations**

**(a) Periodic review of amount of duty**

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**(3) Time limits**

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**(B) Liquidation of entries**

**The suspension of liquidation under section 1673b(d)(2) shall remain in effect until time for filing an action in the Court of International Trade under section 1516a has elapsed. At the conclusion of this period, unless suspension of liquidation remains in effect pursuant to section 1516(a)(c)(2)(A).** if the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

**(C) Effect of pending review under section 1516a**

In a case in which a final determination under paragraph (1) is under review under section 1516a of this title and a liquidation of entries covered by the determination is enjoined or suspended **under that section**, the administering authority shall, within 10 days after the final disposition of the review under section 1516a of this title, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

**Title 28, United States Code:**

**Sec. 1581. Civil actions against the United States and agencies and officers thereof**



[Subsections (a) - (f) omitted]

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any **final** decision of the Secretary of the Treasury **under section 641 the Tariff Act of 1930 to deny a customs broker's license or permit, to revoke a customs broker's license or permit, to suspend a customs broker's license or permit, or to impose a monetary penalty in lieu thereof; and**

(2) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

[Subsection (h) omitted]

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a) through (h) of this section, and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for C

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees or other taxes on the importation of merchandise;

(3) embargoes or other quantitative restrictions on the importation of merchandise;

(4) **any prohibition or condition within the jurisdiction of Customs and Border Protection on the importation of merchandise;**

(5) **importation without otherwise applicable duties, taxes, or fees on the importation of merchandise, or deferral of such duties, taxes, or fees; or**

- (6) administration and enforcement with respect to the matters referred to in paragraphs (1)- (5) of this subsection, or subsections (a) through (h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

- (j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

#### **Sec. 1582. Civil actions commenced by the United States**

- (a) The Court of International Trade shall have exclusive jurisdiction of any civil action which is commenced by the United States C

**(1) to recover a civil penalty under any provision of the Tariff Act of 1930, except that the Court of International Trade shall have concurrent jurisdiction with district courts to recover a civil penalty under section 337 of the Act;**

**(2) to recover a civil penalty within the jurisdiction of Customs and Border Protection arising from any prohibition or condition on the importation of merchandise;**

(3) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury;

(4) to recover customs duties; or

**(5) to enforce a summons under section 510 of the Tariff Act of 1930 (19 U.S.C. 1510).**

- (b) The United States Court of International Trade shall have exclusive jurisdiction of any seizure of merchandise that is imported or attempted to be imported, other than a seizure of narcotics or other controlled substances, under any provision of the Tariff Act of 1930 or any provision within the jurisdiction of Customs and Border Protection**

**setting forth a prohibition or condition on the importation of merchandise.**

**Sec. 2631. Persons entitled to commence a civil action**

[Subsections (a) - (f) omitted]

(g) (1) A civil action to review any **final** decision of the Secretary of the Treasury under section 641 of the Tariff Act of 1930 may be commenced in the **United States** Court of International Trade by the person whose license or permit was **suspended, revoked, or denied, or by the person against whom the decision was issued.**

**(2)** A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

**Sec. 2636. Time for commencement of action**

[Subsections (a) through (f) omitted]

(g) A civil action contesting **any final decision of the Secretary of the Treasury under section 641 of the Tariff Act of 1930** is barred unless commenced in accordance with the rules of the **United States** Court of International Trade within sixty days after the date of the entry of the **final** decision or order of such Secretary.

**Sec. 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. **With respect to a protest under section 514(b) of this Act, a civil action contesting the denial of the protest may be commenced in the Court of International Trade only if all duties, taxes, fees, penalties, and interest assessed by Customs and Border Protection have been paid at the time the action is commenced, but at the conclusion of the civil action the Court shall order that any amount determined to be in excess of the amount lawfully owed be refunded with interest as provided by law.**