

PENALTIES UNDER 19 USC 1621

RE: STATUTE OF LIMITATIONS

CBPs ability to recover a penalty or forfeiture of property under section 19 USC 1592 (592) may be forever barred UNLESS the 592 complaint is filed with the Court of International Trade within 5 Years;

- A. from the date of DISCOVERY of the alleged violation if the violation resulted from FRAUD or;
- B. from the date the alleged violation was COMMITTED (which is usually the date of the entry) if the violation resulted from GROSS NEGLIGENCE or NEGLIGENCE or

Neither applies if the alleged violator is ABSENT from the United States. In which case the statute will then be suspended during the period of absence from the jurisdiction of the U.S. Courts.

On discovery of a possible violation, CBP will determine the expiration of the statute. It is the policy of CBP that a 592 penalty case be presented to the Fines, Penalties & Forfeitures office (FFP), the Office of Regulations & Rulings, and the Regional/District Counsel's Office in sufficient time to assure a prompt referral to the Department of Justice (DOJ) at least six (6) months before expiration of the statute of limitations as noted above.

CBP, on finding that the Statute is expiring before CBP has an opportunity to assemble their complaint, CBP will ask the IOR to agree to a waiver of the statute of limitations. Generally, CBP will generally ask for a suspension of at least 2 years. If the IOR does not agree to the suspension, the case is immediately forwarded to the DOJ.

NOTE: The issuance of a pre-penalty or penalty notice will not suspend the statute of limitations. The statute will continue to run until a Complaint is filed in the Court of International Trade. (However, a violator's absence from the United States will toll the statute.)

19 USC 1501 CFR 173.2 Port director make take action to correct errors made on entry;

- At Liquidation (generally 314 dates from date of entry – unless special duties are part of the entry).
- Voluntary reliquidation within 90 days of liquidation
- Voluntary correction of an exaction within 90 days
- Reliquidation by reason a the filing of a valid protest within 180 days

19 USC 1520(a) (4) CFR 173.4(a) Correction of clerical error, mistake of fact or other inadvertence*

- The IOR may make a change prior to liquidation

19USC 1530 (c) (1) CFR 173.4 Request for administrative review may be made by the IOR OR whoever up to 1 year after liquidation.

* Each of these terms has been defined in court. **Clerical error** is an unthinking mistake made by a clerk who has no responsibility to interpret any laws. E.g. Transposing figures, copying something incorrectly. **Mistake of Fact** means a mistake happens when a fact exists must is not known or which is thought to exist, by in reality, does not. When claiming a mistake of fact, the petitioner must first establish which 'fact' is at issue. Eg. if the importer ordered giraffes, the invoice said giraffes and was entered as giraffes but the shipment was actually zebras. **Other inadvertence** is an oversight, involuntary accident or mistake made through inattention or carelessness. This DOES NOT apply to customs Brokers or Importers mistaken or inadvertent lack of knowledge of the law or tariff schedule nor does it provide a remedy for negligent inaction. None of these terms can result from an error in the construction of the law. (A protest can remedy this restriction).