

§ 174.23

fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing.

(e) *Multiple protests.* If several protests by different persons are timely filed and treated as part of a single protest pursuant to §174.15, a request for accelerated disposition filed by any one of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

§ 174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the port director by filing, on the form prescribed in §174.25, an application for such review within the time allowed and in the manner prescribed by §174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the port director whose decision is the subject of the protest for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the port director in the absence of an application for further review, however, he shall forward the protest and application for consideration in accordance with §174.26.

§ 174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the port director shall be accorded a party filing an application for further review which meets the requirements of §174.25 when the decision against which the protest was filed:

(a) Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made at any port with respect to the same or substantially similar merchandise;

(b) Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts;

(c) Involves matters previously ruled upon by the Commissioner of Customs

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or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or

(d) Is alleged to involve questions which the Headquarters Office, United States Customs Service, refused to consider in the form of a request for internal advice pursuant to §177.11(b)(5) of this chapter.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71-133, 36 FR 8732, May 12, 1971; T.D. 75-186, 40 FR 31928, July 30, 1975]

§ 174.25 Application for further review.

(a) *Form and number of copies.* An application for further review may be filed on the same Customs Form 19 used for filing the protest for which further review is requested, or on a separate Customs Form 19. In either case, the Customs Form 19 shall be filed in quadruplicate. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application.

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in §174.24 which justifies further review. A showing of facts that support

the allegation of a criterion set forth in §174.24(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations described in paragraph (b)(2) of this section would otherwise result in its denial.

[T.D. 70-81, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 78-99, 43 FR 13062, Mar. 29, 1978]

§ 174.26 Review of protest after application for further review.

(a) *Protest allowed.* If upon examination of a protest for which an application for further review was filed the port director is satisfied that the claim is valid, he shall allow the protest.

(b) *Other protests.* If upon examination of a protest for which an application for further review was filed the port director decides that the protest in his judgment should be denied in whole or in part, he shall forward the application together with the protest and appropriate documents to be reviewed as follows:

(1) A protest shall be reviewed by the Commissioner of Customs or his designee under Customs Delegation Order No. 1 (Revision 1), T.D. 69-126 (34 FR 8208), as amended from time to time, if the protest and application for review raise an issue involving either:

- (i) Lack of uniformity of treatment;
- (ii) The existence of an established and uniform practice;
- (iii) The interpretation of a court decision or ruling of the Commissioner of Customs or his designee; or
- (iv) Questions which have not been the subject of a Headquarters, U.S. Customs Service ruling or court decision.

(2) All other protests shall be reviewed by a designee of the port director who did not participate directly in the decision which is the subject of the protest.

§ 174.27 Disposition after further review.

Upon completion of further review, the protest and appropriate documents forwarded for review shall be returned to the port director together with directions for the disposition of the protest.

§ 174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest. In any case in which alternative claims or additional grounds or arguments are submitted orally, they shall be considered in the allowance or denial of the protest only if submitted in writing in conjunction with, or no later than 60 days after, such oral submission.

(R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

[T.D. 71-15, 36 FR 778, Jan. 16, 1971]

§ 174.29 Allowance or denial of protests.

The port director shall allow or deny in whole or in part a protest filed in accordance with section 514, Tariff Act of 1930, as amended, 19 U.S.C. 1514) within 2 years from the date the protest was filed. If the protest is allowed in whole or in part the port director shall remit or refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due. If a protest of an exporter or producer under §174.12(a)(5) of this part is allowed in whole or in part, any monies found to have been collected in excess shall be refunded to the party who paid the monies even if such party did not file an appropriate and timely protest under this part. If the protest is denied in whole or in part the port director shall give notice of the denial in the form and manner prescribed in §174.30.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94-1, 58 FR 69472, Dec. 30, 1993]

§ 174.30 Notice of denial of protest.

(a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases other than those in which accelerated disposition was requested and in which no action has been taken within 30 days after the date of mailing of the request. The notice shall include a