

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