

§ 177.12 Inconsistent customs decisions.

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested Parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) A port authority; and

(iii) An "interested party," as described in section 516(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in section 514(a) of the Tariff Act, the petition must be filed within the time prescribed by section 514(c)(2), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition—(1) Form.* The petition shall be in the form of a letter addressed to the Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229-0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other Customs office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of merchandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Any information which the petitioner considers to be confidential business information should be so noted pursuant to § 177.2(b)(7) of this subpart and a sanitized version of his petition should be submitted as well as the three copies requested in paragraph (b)(1) of this section. Petitions which do not contain information sufficient to permit the Customs Service to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the Customs Service with respect to the decisions alleged to be inconsistent.

(i) *Tariff classification decision.* In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in § 177.2 (b)(1) and (b)(2)(ii) of this subpart, including a sample (see § 177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings.* In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in §§ 177.1 through 177.10 of this subpart, the information contained in § 177.2 (b)(1), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment.* Upon receipt of a properly filed petition, notice will be published in the

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FEDERAL REGISTER announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition shall be limited to that submitted in writing, either with the petition or in response to the FEDERAL REGISTER solicitation of public comment.

(d) *Determination of petition; distribution and publication.* Within fifteen (15) days after the close of the period for public comment referred to in paragraph (c) of this section, the Customs Service will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of the Customs Service as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decisions to the petitioner will be transmitted directly to all ports (or other Customs offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct any inconsistency identified. A summary of the decision will also be published in the FEDERAL REGISTER and the weekly Customs Bulletin.

(e) *Effective date.* Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures.* The filing of a petition under this procedure shall not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514, 515 and 516 of the Tariff Act of 1930, as amended and parts 174 and 175 of this chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as

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an information letter setting forth the position of the Customs Service pursuant to subpart A of part 175 of this chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514-515 of the Tariff Act and part 174 of this chapter.

[T.D. 89-74, 54 FR 31517, July 31, 1989]

Subpart B—Government Procurement; Country-of-Origin Determinations

AUTHORITY: R.S. 251, as amended (19 U.S.C. 66), sec. 624, 46 Stat. 759 (19 U.S.C. 1624); Pub. L. 96-39, 93 Stat. 144.

SOURCE: T.D. 83-13, 48 FR 1189, Jan. 11, 1983, unless otherwise noted.

§ 177.21 Applicability.

This subpart applies to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, "Trade Agreements Act of 1979," Pub. L. 96-39, 93 Stat. 144, for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products for eligible countries. This subpart is intended to be applied consistent with the Federal Procurement Regulations (41 CFR part 1-6) and the Defense Acquisition Regulation (32 CFR section VI).

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term "instrumentality" shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.