

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

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statement of the reasons for the denial, as well as a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

(b) *Substitution of persons designated to receive notice.* The importer of record or consignee may give notice to the port director instructing that notice of denial of any protest involving merchandise imported in his name or on his behalf shall be mailed to a person other than the person filing such protest or the designee of such person. Such notice of substitution shall be filed in quadruplicate and shall identify the protest by number and date of receipt. Notice of denial of a protest shall be mailed to the substituted person so designated only if the notice of substitution is received by the port director prior to a denial by him of such protest.

(c) *Notification of payment of increased duties.* The port director shall note on the notice of denial of a protest the payment of all liquidated duties, charges, or exactions, if he has actual knowledge of such payment at the time that the protest is denied.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 174.31 Judicial review of denial of protest.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after—

(a) The date of mailing of notice of denial, in whole or in part, of a protest,

(b) The date a protest, for which accelerated disposition was requested, is deemed to have been denied in accordance with § 174.22(d), or

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(c) The date that a protest is deemed denied in accordance with § 174.21(b), or § 151.16(g) of this chapter.

[T.D. 78-17, 43 FR 1938, Jan. 13, 1978, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985; T.D. 99-65, 64 FR 43612, Aug. 11, 1999]

§ 174.32 Publication.

Within 120 days after issuing a protest review decision, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR part 103.

[T.D. 78-394, 43 FR 49791, Oct. 25, 1978]

PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

Sec.

175.0 Scope.

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Subpart D—Procedure Following Court Decision

175.31 Publication of notice of court decision.

AUTHORITY: R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624, unless otherwise noted.

SOURCE: T.D. 70-181, 35 FR 13432, Aug. 22, 1970, unless otherwise noted.