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U.S. Customs Protest Primer

MARCH 28, 2023

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U.S. Customs and Border Protection (CBP) serves both a revenue-generating function within the federal government and also a protective function to guard consumers, domestic industry, and national security. In doing so, CBP exercises broad discretion as it decides issues of critical importance to domestic stakeholders. Those decisions are subject to review when resulting in an incorrect conclusion or adverse impact, particularly through exercising the right of protest [19 USC 1514; 19 CFR 174.2, 174.11]. Protesting can be an important and impactful right considering the high-dollar and high-stakes nature of import trades.

This simple primer provides background on what protests are and how the process can help to mitigate exposure from erroneous or incorrect decisions by CBP.

What is a protest?

Only a few stakeholders may protest a CBP decision (a "Protesting Party"). A Protesting Party may be: a customhouse broker (CHB); an importer or consignee on entry papers; or any person paying or receiving a refund of any charge or exaction [19 CFR 174.3, 174.12]. Additionally, an agent or attorney for a Protesting Party may file a protest on its behalf [19 CFR 174.3]. The range of CBP actions and decisions subject to the right of protest includes:

- Clerical error
- Appraised value of merchandise
- Classification and rate and amount of duties chargeable
- Charges and extractions including accrued interest
- Exclusion of merchandise from entry, delivery, or demand for redelivery to CBP custody (except for under certain laws dealing with unfair import trade practices)
- Liquidation or reliquidation of an entry or modification of an entry
- Refusal to pay a claim for drawback
- Refusal to reliquidate an entry made before 2004
- Refusal to reliquidate entry under Free Trade Agreement rules of origin [19 USC 1520(d)]

What is the process?

A protest may be filed within one-hundred and eighty (180) days of either of two trigger events: liquidation of the entry for import, or the issuance of a CBP decision. Generally, CBP will review the protest and either allow or deny it within two (2) years of its filing [19 USC 1515(a); 19 USC 174.29].

However, a Protesting Party may also request accelerated review and disposition of the protest [19 USC 1514; 1515(a); 19 USC 174.29]. To obtain accelerated disposition, a Protesting Party should file by registered or certified mail a written request (a "Request") with the Port Director, Center director, or the CBP Officer with whom the protest was filed [19 CFR 174.22(b)]. The Request itself should contain basic identification of the Protesting Party and the protest itself [19 CFR 174.22S]. The official who received the Request will review the applicable protest within thirty (30) days of the mailing of the Request, and the official will allow or deny the protest in whole or in part [19 CFR 174.22(c)]. If the official fails to do so, then the protest will be deemed to have been denied [19 CFR 174.22(c); 19 USC 1515(b)].

Protests will also be deemed denied if they are related to an administrative action relating to the exclusion of merchandise from entry or delivery under Customs Laws and if they are not allowed or denied within thirty (30) days, or if the protest was filed as a result of a final determination or deemed exclusion of detained merchandise and it is not allowed or denied in whole or in part within thirty (30) days [19 CFR 151.16(g), 174.21(b), 174.31].

Additionally, when a protest is created and any time before it is decided, the Protesting Party can apply for further review of the protest [19 USC 1515(a)]. If granted, then the protest will be subject to additional review by a second CBP officer, but still subject to the two-year review time period proscribed for CBP review. If the Protesting Party believes the application for further review was erroneously or improperly denied, it may file a request that the decision be set aside within sixty (60) days of the denial date [19 USC 1515(c)].

What happens after review?

A protest will be reviewed and then CBP will either allow it in whole or in part, or deny it [19 USC 1515]. If a protest is allowed in whole or in part, then CBP will remit or refund any duties, charges, or exactions determined to have been excessive or pay any drawback that is determined to have been due [19 USC 1515]. Within ninety (90) days after issuing a protest review, CBP will publish the decision [19 CFR 174.32].

While CBP generally has two (2) years to review a protest, if the protest is denied, then notice of denial will be mailed to the Protesting Party within thirty (30) days of the mailing date of the protest. This notice will include the reason for the denial and will detail the Protesting Party's right to file civil action [19 USC 1514; 19 CFR 174.30].

How do I dispute Denial of Protest?

If a protest is denied, a Protest Party may contest the denial by filing civil action in the U.S. Court of International Trade within one-hundred and eighty (180) days after: the date of mailing the notice of denial in whole or part; the date of deemed denial for a protest subject to a Request; or the date that a protest is otherwise deemed denied [19 CFR 174.31; 28 USC 2632]. A civil action contesting the denial of a protest may only occur if all liquidated duties, charges, or excations have been paid at the time the action is commenced except for a surety's payment obligations [28 USC 2637].

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