

## Port of Chicago - Pipeline



U.S. Customs and  
Border Protection

**Pipeline 07-42**

**November 13, 2007**

**To: Customhouse Brokers, Importers, and Others Concerned**

**Subject: Protest and Petitions Procedures**

The purpose of this pipeline is to update procedures for filing protests and petitions in the Port of Chicago.

### **Types of Filings**

#### **514 Protest**

A protest is the legal means by which a party may challenge a decision made by Customs. Most protests involve classification of the merchandise and the amount of duties assessed. Other issues can be protested, such as failure to release merchandise (inadmissibility notices) or refusal to allow a claim for drawback.

There are currently two different time frames for filing protests based on the date the entry was filed. For entries filed **before** December 18, 2004, protests must be filed within 90 days after the date of liquidation or the date of the decision, which is being challenged.

**For entries filed on or after December 18, 2004**, the process has changed. Within 180 days of liquidation, the importer, their broker, or attorney can contest CBP decisions relating to imported merchandise with a protest under section 514 of the Tariff Act of 1930. For entries filed on or after December 18, 2004, section 520(c) is repealed and cannot be used. In other words, the period during which a protest can be filed has been extended, while the option to file a petition which could only be used to correct clerical errors has been terminated.

Protests may be filed by the importer or consignee or his surety; a person paying a charge or exaction; a person seeking entry or delivery; a person filing a claim for drawback; or the authorized agents of the parties described above.

Protests are filed on paper by submitting CBP Form 19, PROTEST, or electronically through the Automated Broker Interface (ABI). All attachments to

the protest, other than samples or similar exhibits, must be filed in quadruplicate. For more information on protests, refer to Part 174 of the Customs Regulations.

### **520(d) Petition**

A 520(d) petition is a request for liquidation or reliquidation to obtain a refund of duties when a claim for preferential tariff treatment under the North American Free Trade Agreement (NAFTA), Chile Free Trade Agreement (CFTA) and Central America Free Trade Agreement (CAFTA) was not made at the time of entry. These **petitions must be filed within one year after the date of importation** and are filed in the form of a letter or electronically through ABI.

### **Parties Involved in Protests & Petitions**

Customs categorizes the involved parties as the protestant, protest filer, and refund care/of, as described below.

**Protestant** is the party who is challenging the Customs decision.

**Protest Filer** may be the same party as the protestant, or may be the protestant's authorized agent (e.g. broker or attorney).

**Refund Care/of** is the party to whom any refunds with respect to the entry under protest should be mailed.

### **Filing Procedures**

**Filing location.** Protests and petitions are normally filed with the Port Director whose decision is being challenged. If filed in the wrong port, the protest or petition will be returned to the filer for submission to the proper location. This may affect the timeliness of the filing.

**Assignment of unique number.** Upon receipt, the protest or petition is input into Customs computer system, assigned a unique number, and a copy returned to the filer. When an electronic protests is filed, the protest number is generated at that time.

**Untimely filings.** If the protest or petition is filed late, it will be denied immediately without regard to the substance of the claim. If filed prematurely (prior to liquidation), the protest or petition will be denied as untimely.

**Missing/Incorrect Data.** If identifying information is missing or incorrect, such as an incorrect entry number, the filer will be notified. If the required information is not provided within 30 days, the protest or petition will be processed based on the available information, which often results in a denial.

**Missing entries.** If an entry cannot be located, or if a paperless summary was not submitted with the protest, the filer will be notified. If the requested entry

summary is not received within 30 days, the protest or petition may be denied with respect to the entry summaries not provided.

**Amendments.** A protest or petition may be amended at any time prior to the expiration of the 90/180-day filing period. The amendment may assert additional claims pertaining to the decision being challenged, or may challenge an additional decision relating to the same category of merchandise.

**Additional Arguments.** Additional grounds or arguments may be submitted for consideration at any time prior to disposition of the protest or petition.

**Decision.** After review of the protest or petition, Customs notifies the filer or designated party of the decision by mail or electronically.

### **Application for Further Review**

An application for further review (AFR) may be filed at any time during the 90/180 day filing period for a 514 protest. AFRs will only be approved when the decision against which the protest was filed:

- Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made in any port with respect to the same or substantially similar merchandise;
- 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;
- Involves matters previously ruled upon by the Commissioner of Customs 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
- Is alleged to involve questions which the headquarters office, U.S. Customs and Border Protection, refused to consider in the form of a request for internal advice pursuant to Section 177.11(b)(5), Customs Regulations.

A justification for further review, clearly citing one or more of the criteria listed on 19 CFR 174.24 and supported by the requirements in 19 CFR 174.25 as mentioned above, must be included in the application. The AFR boxes on CBP Form 19 should not be filled in unless the protestant is actually requesting further review. Failure to strictly comply with these requirements will result in denial of AFR and action on the protest at port level. Many filers appear to request an AFR by inadvertently filling out section 14 of CBP form 19. This only partially fulfills the regulatory requirements and may result in the delay of processing of the protest.

## **Accelerated Disposition**

Requests for accelerated disposition can be filed concurrent with, or at any time after submission of the protest. The request must be filed via certified mail or electronically via ABI. The protest shall be reviewed within 30 days of the date of the request. If the protest is not reviewed within 30 days, it shall be deemed denied. This means that even if the protest would have been allowed, but the 30-day deadline is not met, the protest is denied.

## **Filing Tips**

- The CBP form 19 can be downloaded from CBP.gov.
- All protests and petitions should be sent to the Protest & Files Unit, 9915 Bryn Mawr Ave, Rosemont, IL 60018. If you send your requests to the wrong office it will delay the protest processing time.
- Limit each protest or petition to no more than ten entries when possible.
- The importer name and IR number cited on the protest should match the importer name and IR number on the entry.
- Do not send in duplicate protests. If you did not receive a numbered receipt copy please call the Protest Unit at (847) 928-8069 for assistance.
- Entry Specialists, rather than the commodity teams normally review protests and petitions involving the following issues: Duplicate entry/entry summaries; errors in currency conversions; incorrect calculations or payment of the merchandise processing fee or the harbor maintenance fee; Chapter 98 issues; informal entries.

In order to properly route protests and petitions to the correct review team, we recommend the filer clearly indicate at the beginning of the narrative that one of the above issues is being addressed.

- If the refund is to be mailed in care/of the importer's agent, be sure to include the IR number of the agent in the appropriate block of the CBP Form 19. If not already on file, a CBP Form 4811 should be submitted with the protest.

## **Content Tips for Protests**

The filer has 90/180 days to perfect a protest. Customs is not obligated to request supporting documentation or clarification after the submission of the protest. The following tips on the content of protests may be beneficial for all protest filers. Please use this information as a guide to assist you in preparing a protest.

CBP Form 19 is to be submitted in quadruplicate pursuant to 19 CFR 174.12(b) of the Customs Regulations. Supporting documentation should also be submitted in quadruplicate.

### **Value Issues**

Issues involving corrected invoices, terms of sale errors, or any other deductions to the price actually paid or payable should include proof of payment between the buyer and seller of the goods. Examples of proof of payment include: debit memos for letters of credit, copies of bank drafts, documentation showing the amount of wire transfers, etc. If payment of goods is included in a multiple listing of purchase orders, documentation showing the purchase orders, invoices, and payment applicable will be acceptable. In addition, copies of any corrected invoices, amended purchase orders, contracts or other related correspondence or documentation should also be provided. Issues involving buying or selling commissions should include copies of the buying or selling agent agreement. The aforementioned documentation is not necessary for currency conversions. For protests involving value issues in general, please note 19 CFR 152.

### **Classification Issues**

Examples of supporting information for classification issues include samples, brochures, schematics, photographs and descriptive literature. In some cases, statements from the manufacturer regarding fabrication processes and component breakdowns may also be helpful.

Please note that for U.S. fabricated components assembled abroad claims you should provide the importer's affidavit and the Foreign Assembler's declaration with the protest package. For repair claims, please submit the repair affidavit. For any protest involving goods that have been exported and re-imported, please note the requirements of 19 CFR 10.

### **Pursuing Denials**

Denials of Section 514 protests can be further addressed by the protestant by filing suit against Customs in the U.S. Court of International Trade within 180 days of the notice of denial. Customs is notified of this action through a summons issued by the court. Customs must then forward the protest and all associated materials, including the entries, to the court.

### **MOD Act Changes**

The Customs modernization legislation included certain further administrative action on protests, as described below.

- ***AFR denials.*** If an application for further review is denied and the protestant believes the denial was erroneous, improper, or done without

due authority, the protestant has 60 days from the notice of the AFR denial to request a review of such denial. 19 U.S.C. 1515(c)

- **Protest denials.** If a protest is timely and properly filed, but is denied contrary to proper instructions, Customs may void the denial of a protest. This may be done on Customs' own initiative or pursuant to a written request by the protestant filed with the appropriate port director within 90 days after the date of protest denial. 19 U.S.C. 1515(d)

**Superseded Material**

Chicago Pipeline No. 98-24, entitled Protest and Petition Procedures, dated July 08, 1998, is hereby superseded.

If you have questions concerning this pipeline please direct them to the Entry Specialist assigned to the Protest & Files Unit at (847) 928-8069 or Mary Lou Belfiore, Supervisory Entry Specialist at (847) 928-6074.



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