

## § 172.43

Security and Trade Compliance Division, Regulations and Rulings, for review and decision.

(c) *Authority of Executive Director.* Any authority given to any Headquarters official by this part may also be exercised by the Executive Director, Regulations and Rulings, Office of International Trade, or his designee.

### § 172.43 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

## PART 173—ADMINISTRATIVE REVIEW IN GENERAL

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AUTHORITY: 19 U.S.C. 66, 1501, 1520, 1624.

SOURCE: T.D. 70-181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

### § 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under section 520(c)(1), Tariff Act of 1930, as amended, for entries made before December 18, 2004, and the authority to review an entry of household or personal effects.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 11-02, 76 FR 2577, Jan. 14, 2011]

### § 173.1 Authority to review for error.

Port directors have broad responsibility and authority to review trans-

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actions to ensure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79-221, 44 FR 46830, Aug. 9, 1979]

### § 173.2 Transactions which may be reviewed and corrected.

The port director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

(a) Liquidation of an entry;

(b) Voluntary reliquidation completed within 90 days after liquidation;

(c) Voluntary correction of an exaction within 90 days after the exaction was made;

(d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or

(e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

### § 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* Within 90 days from the date notice of deemed liquidation or notice of the original liquidation is given to the importer, consignee, or agent, the port director may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the port director or is brought to his attention by an interested party.

(b) *Notice of reliquidation.* Notice of a voluntary reliquidation will be given in accordance with the requirements for

giving notice of the original liquidation.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 07-62, 72 FR 40737, July 25, 2007; CBP Dec. 11-02, 76 FR 2577, Jan. 14, 2011]

**§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.**

(a) *Authority to review and correct entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004.* Even though a valid protest was not filed, the port director, upon timely application and for entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended, a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section, by reliquidation or other appropriate action.

(1) *Transactions that may be corrected.* Correction may be made to any entry, liquidation, or other customs transaction made before December 18, 2004, if the clerical error, mistake of fact, or other inadvertence:

- (i) Does not amount to an error in the construction of a law;
- (ii) Is adverse to the importer; and
- (iii) Is manifest from the record or established by documentary evidence.

(2) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section must be brought to the attention of the director of the port of entry or other appropriate CBP officer within 1 year after the date of liquidation or exaction. The party requesting reliquidation under this section must state, to the best of his or her knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

(b) *Entries of merchandise made, or withdrawn from warehouse for consumption, on or after December 18, 2004.* For merchandise entered, or withdrawn

from warehouse for consumption, on or after December 18, 2004, CBP does not have the authority, in situations where a valid protest has not been filed, to reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence. For merchandise entered or withdrawn from warehouse for consumption on or after December 18, 2004, and except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended, a CBP decision involving any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation, may be corrected by protest only. See 19 CFR 174.11.

(c) *“Liquidation” includes reliquidation.* “Liquidation,” as used in this section, includes reliquidation of an entry.

[CBP Dec. 11-02, 76 FR 2577, Jan. 14, 2011]

**§ 173.4a Correction of clerical error prior to liquidation.**

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), the port director may, prior to liquidation of an entry, take appropriate action to correct a clerical error that resulted in the deposit or payment of excess duties, fees, charges, or exactions.

[T.D. 85-123, 50 FR 29957, July 23, 1985]

**§ 173.5 Review of entry covering household or personal effects.**

An error in the liquidation of an entry covering household or personal effects may be corrected by the port director even though a timely protest was not filed if entry was made before December 18, 2004 and an application for refund is filed with the port director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the port director has authority to grant. Where the port director has no authority to grant the

waiver, the application will be referred to the Commissioner of CBP.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 11-02, 76 FR 2577, Jan. 14, 2011]

## PART 174—PROTESTS

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174.0 Scope.

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AUTHORITY: 19 U.S.C. 66, 1514, 1515, 1624.  
Section 174.21 also issued under 19 U.S.C. 1499.

SOURCE: T.D. 70-181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

#### § 174.0 Scope.

This part deals with the administrative review of decisions of the port director, including the requirements for the filing of protests against such decisions, amendment of protests, review and accelerated disposition, and provisions dealing with further administrative review. Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking de-

isions under the North American Free Trade Agreement are contained in part 181 of this chapter.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94-1, 58 FR 69472, Dec. 30, 1993]

### Subpart A—General Provisions

#### § 174.1 Definitions.

When used in this part, the following term shall have the meaning indicated:

*Further review.* “Further review” means review of the decision which is the subject of the protest by Customs officers on a level higher than the district, and in Region II by Customs officers who did not participate directly in the decision which is the subject of the protest.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 95-77, 60 FR 50020, Sept. 27, 1995]

#### § 174.2 Applicability of provisions.

(a) *In general.* The provisions of this part shall be applicable to protests against decisions involving:

(1) Articles excluded from entry or entered or withdrawn from warehouse for consumption on or after October 1, 1970;

(2) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which appraisement has not become final by October 1, 1970;

(3) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which the appraisement has become final but with respect to which the entry has not been liquidated prior to October 1, 1970;

(4) Articles entered or withdrawn from warehouse for consumption with respect to which the entry has been liquidated prior to October 1, 1970, if

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970; or

(5) Articles excluded from entry before October 1, 1970, with respect to which