

of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 11-02, 76 FR 2578, Jan. 14, 2011]

§ 174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the port director by filing, on the form prescribed in § 174.25, an application for such review within the time allowed and in the manner prescribed by § 174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the port director whose decision is the subject of the protest for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the port director in the absence of an application for further review, however, he shall forward the protest and application for consideration in accordance with § 174.26.

§ 174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the port director shall be accorded a party filing an application for further review which meets the requirements of § 174.25 when the decision against which the protest was filed:

(a) Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made at any port with respect to the same or substantially similar merchandise;

(b) 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;

(c) 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

(d) Is alleged to involve questions which the Headquarters Office, United States Customs Service, refused to consider in the form of a request for inter-

nal advice pursuant to § 177.11(b)(5) of this chapter.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71-133, 36 FR 8732, May 12, 1971; T.D. 75-186, 40 FR 31928, July 30, 1975]

§ 174.25 Application for further review.

(a) *Form and number of copies.* An application for further review may be filed on the same Customs Form 19 used for filing the protest for which further review is requested, or on a separate Customs Form 19. In either case, the Customs Form 19 shall be filed in quadruplicate. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application.

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in § 174.24 which justifies further review. A showing of facts that support 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)