

Customs Law Advisory

October 31, 2007

Protests Filed at Ports Other Than Port of Entry Can, In Some Cases, Still Protect Importer Rights

A decision by the U.S. Court of International Trade (“CIT”) confirmed that U.S. Customs and Border Protection (“CBP”) can resolve a protest, even if the protest is filed by the importer at a port other than the one through which the entry was made. If port officials deny a protest regarding entries made through another port, that denial still may be appealed to the CIT for relief. We always recommend that importers file protests at the port of entry in order to fully comply with CBP Regulations and maximize the chance for approval. However, if the protest is denied, and even if an error is made in the port of filing, the importer may still have the right to pursue a refund in court.

An importer may challenge a CBP decision by filing a protest, typically within 180 days of liquidation (or 90 days for most entries made before 2005). The CBP Regulations state that protests “shall be filed with the port director whose decision is protested.” In the case of *Avecia, Inc. v. United States*, the CIT considered a protest filed at the Port of Philadelphia which challenged the classification of products in entries made through that Port and in three entries made through the Ports of Newark and Baltimore. The protest was denied and Avecia appealed to the CIT. CBP argued that the three non-Philadelphia entries were not included in a protest filed at the correct port and therefore the court did not have jurisdiction over the denied protests. In a decision late last year, the CIT found that no statute prohibited the Port of Philadelphia from considering the protest, and since CBP denied the protest without objection, it could not now challenge the validity of the protest or the CIT’s jurisdiction. Of particular importance to the CIT was the fact that CBP simply declared the protest “denied in full,” without any objection regarding the port of entry. Having waived objection to the place of filing, CBP could not later rely on that requirement.

Earlier this year, the CIT denied CBP’s request for reconsideration on this issue, and provided more detailed analysis. The CIT found that even though CBP Regulations state that a protest should be filed at the port of entry, the CBP Regulations do not control the court’s jurisdiction. The CIT concluded that no statute or regulation prohibits a port director from ruling on entries from another port.

We recommend that importers always file protests on a port-by-port basis, as directed in the CBP Regulations. Assuming that all other requirements are met, this ensures that the importer’s rights will be fully protected, including the right to an appeal to the CIT if the protest is denied. Moreover, it is not clear exactly what would result if CBP specified that the protest was rejected because the port was incorrect. However, if a protest is denied, and even if an importer finds a mistake about the port of entry was made, the CIT’s *Avecia* analysis provides another potential tool for importers to use in appealing for proper treatment by CBP of all the importer’s entries.

If you have any questions on protests or any challenge to action by CBP, please contact Greg McCue (202-429-6421, gmccue@steptoe.com) or Mike Gershberg (202-429-6208, mgershbe@steptoe.com).

To subscribe to Customs_Law_Advisory [click here](#).

To unsubscribe, send the message 'Unsubscribe Customs_Law_Advisory' to information@steptoe.com.

Step toe & Johnson (LLP) provides a variety of periodic, complimentary newsletters via e-mail, including: Customs Law Advisory; Daily Tax Update; E-Commerce Law Week; EU Analyst: Environment & Life Sciences; EU Financial Services Briefing; Exempt Organizations Advisory; Immigration Law Advisory; International Law Advisory (US & UK); and London Employment Law Update. To receive any of these advisories, please [click here](#).

© Copyright 2007 Step toe & Johnson LLP. All Rights Reserved. No distribution or reproduction of this issue or any portion thereof is allowed without written permission of the publisher except by recipient for internal use only within recipient's own organization. The opinions expressed in this publication are for the purpose of fostering productive discussions of legal issues and do not constitute the rendering of legal counseling or other professional services. No attorney-client relationship is created, nor is there any offer to provide legal services, by the publication and distribution of this newsletter. This publication is designed to provide reasonably accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, counseling, accounting or other professional services. If legal advice or other professional assistance is required, the services of a competent professional person in the relevant area should be sought.

www.step toe.com

[CONTACT US](#) | [PRIVACY](#) | [TERMS OF USE](#) | © STEPTOE & JOHNSON LLP | POWERED BY FIRMSEEK

[Washington](#) | [New York](#) | [Chicago](#) | [Phoenix](#) | [Los Angeles](#) | [Century City](#) | [London](#) | [Brussels](#)