

# **LAW OFFICES OF NITHYA NAGARAJAN, LLC**

## **INTERNATIONAL TRADE LAW AND CONSULTING**

### **OPTIONS FOR RESOLUTION OF CUSTOMS MATTERS**

#### **Customs Protests**

If an importer discovers errors in an entry summary after liquidation of the entry or if the importer disagrees with CBP's action on any of its entries at any time, the importer has the right to file a protest to CBP and ask for refunds. Protests can take any form, but are generally filed on CBP Form 19. The key to filing a protest is timing as a protest must be filed within 180 days of liquidation. Protests are not the same as petitions for relief, which are authorized under other statutes. Protests are legally authorized under 19 USC §1514 and are available for the administrative resolution by CBP of "any clerical error, mistake of fact, or other inadvertence . . . adverse to the importer in any entry, liquidation, or re-liquidation."

The subject matter of a Section 1514 protest is limited to "(i) the appraised value of merchandise, (ii) the classification and rate and amount of duties chargeable, (iii) . . . charges . . . within the jurisdiction of the Secretary of the Treasury, (iv) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title [unfair trade practices], (v) the liquidation or re-liquidation of an entry . . . , (vi) the refusal to pay a claim for drawback or (vii) the refusal to re-liquidate an entry under [19 USC 1520(d), trade agreement refunds]".

If a protest is accepted, CBP will re-liquidate the entry and send the importer a refund. If the local CBP office denies the protest, the importer may request further review from CBP Headquarters. If CBP Headquarters denies the request, the importer has the option of filing an appeal and litigating the matter before the Court of International Trade (CIT). CIT decisions are reviewable by a U.S. Court of Appeals.

Most protests can be prepared on behalf of the importer by the broker used at the time of entry or in a complex case by legal counsel with experience in customs issues.

The Law Offices of Nithya Nagarajan, LLC provide experienced guidance to importers throughout the protest process; including investigation of the circumstances of the error, evaluation of the nature and extent of errors, preparation of initial filings and case closure.

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### **Prior Disclosures**

Prior Disclosure is a tool available to importers to report to Customs errors in entry type, classification or valuation, and other incorrect information associated with the filing requirements at the time of entry.

When properly prepared and timely filed, a prior disclosure protects the importer and can significantly reduce the amount of penalties that would have been imposed had Customs initiated an administrative penalty action under 19 U.S.C. §1592. In a case involving negligence or gross negligence, Customs is limited to collecting interest on the liquidated amount of duties originally due.

To be valid, a prior disclosure must advise Customs of the circumstances of the violation, including: the nature of the errors or incorrect information submitted; the identity of the entries or period to which the disclosure relates; and, provide Customs with the correct information that should have been given. If the errors or incorrect information result in a loss of revenue, the importer is required to tender the additional amount owing. In the case of a drawback filer, it is required to tender any overpayments that may have occurred as a result of the errors.

Timing is often critical in prior disclosure cases, as a prior disclosure is valid only if it is filed before Customs initiates a formal investigation of the wrongdoing, or the prior disclosure is filed by the disclosing party before knowledge of the initiation of the formal investigation. While a properly prepared prior disclosure can shield an importer or drawback filer from significant penalties, an improperly prepared disclosure will result in the loss of that protection, while notifying Customs of the existence of the problem.

The Law Offices of Nithya Nagarajan, LLC provide experienced guidance to importers throughout the prior disclosure process; including investigation of the circumstances of the violation, evaluation of the nature and extent of errors, preparation of initial disclosure report and calculation and tender of any loss of revenue, and case closure.

