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CUSTOMS DIRECTIVE NO. 3810-009A

DATE: JUNE 28, 1999

SUPERSEDES: 099 3810-009, 7/12/94

REVIEW DATE: JUNE 1999

**SUBJECT: ADMINISTRATIVE AND JUDICIAL REVIEW OF ORIGIN
DETERMINATIONS UNDER THE NORTH AMERICAN FREE TRADE
AGREEMENT (NAFTA)**

1 PURPOSE. This directive establishes procedures for the administrative and judicial review of origin determinations under the North American Free Trade Agreement (NAFTA).

2 POLICY. Importers in the United States, and exporters and producers in Canada and Mexico who completed a NAFTA Certificate of Origin, may request administrative review of an origin determination by filing a protest in accordance with 19 CFR §174.12. The NAFTA does not grant exporters and producers in Canada and Mexico general protest rights. 19 CFR 174.12(a)(5) limits their protest rights to determinations of origin under 19 CFR §181, Subpart G. Importers, of course, retain the ability to protest a wide variety of Customs decisions under 19 CFR §174.11.

3 AUTHORITIES/REFERENCES. 19 U.S.C. 1514; 19 CFR §174; Article 510 of the NAFTA; Section 208, Title II, Customs Provisions, NAFTA Implementation Act (Public Law 103-182).

4 RESPONSIBILITIES. Assistant Commissioner, Deputy Assistant Commissioner, Field Programs Executive Director, Field Operations Executive Director, Director Trade Programs, Field Operations Directors, and Port Directors, Assistant Port Directors, Supervisory Import Specialists, NAFTA Coordinators, Import Specialists, and Entry Specialists will ensure that the procedures in this directive are followed.

5 PROCEDURES.

5.1 Filing: Importers in the United States, and exporters and producers in Canada and Mexico who have completed a Certificate of Origin, may obtain administrative review of NAFTA origin determinations by filing protests under 19 U.S.C. 1514 (please see 19 CFR §181.75(b)(iv)). Such protests shall be filed in accordance with 19 CFR §174.12, within 90 calendar days after, but not before, the date of liquidation of the entry. U.S. Customs will not notify exporters and producers in Canada and Mexico of the date of liquidation. It is incumbent upon them to obtain this information from the importer, the importer's Customs broker or by checking the bulletin notice of liquidation.

5.2 Protests shall be filed in English on Customs Form 19 or a letter of the same size clearly labeled "Protest" and setting forth the same content as the Form 19. Protests shall be filed with the Port Director of the port of entry. A protesting party may file one

protest encompassing multiple entries, that were originally filed in the same port, if all the entries concern the same merchandise and the protest pertains to a decision common to all the entries.

5.3 In addition to the information listed in 19 CFR 174.13, a foreign producer or exporter shall furnish the importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer.

5.4 The protest module allows for a foreign exporter or producer number to be entered as the filer. "Protest actually filed by (exporter or producer number and name)" shall be entered in the remarks section.

5.5 Customs Processing: Customs will process protests of origin determinations as 514 protests using the policies and procedures established in Customs Directive 099 3550-065, except with regard to the consolidation of protests filed by different parties. The following procedures shall be followed for the consolidation of multiple protests concerning a protest of origin determination:

5.5.1 If requested by all interested parties (i.e., the exporter, producer and/or importer who filed a protest or on whose behalf a protest was filed), Customs will consolidate multiple protests of a single determination of origin and a separate notice of the decision decision will be issued to each interested party without regard to whether the notice reflects confidential business information. (See 19 CFR §174.15(b)(1))

5.5.2 Where all interested parties do not request consolidation, Customs may consolidate the protests for internal processing but shall issue separate, confidential notices to each protestant. (See 19 CFR §174.29)

5.5.3 If the U.S. Customs Service decides to allow the protest of a producer or exporter, either in whole or in part, any monies owed by the government will be refunded to the party that paid those duties (generally the importer of record) even if that party never filed a protest.

5.6 Judicial Review: Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the Court of International Trade within 180 days after the date of mailing of the notice of denial.

Assistant Commissioner
Office of Field Operations