

## U.S. Customs and Border Patrol Expands Reconciliation Opportunities

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In the May 13, 2013 Federal Register, **United States Customs and Border Protection (CBP)** announced the expansion of its Reconciliation Prototype program to include post-importation duty preference claims under the U.S.-Oman Free Trade Agreement, the U.S.-Peru Trade Promotion Agreement, the U.S.-Korea Free Trade Agreement, the U.S.-Colombia Trade Promotion Agreement, and the U.S.-Panama Trade Promotion Agreement. CBP announced this expansion will take effect for post-importation duty preference claims filed on or after August 12, 2013.

The expansion will enable importers to file post-entry duty preference claims under the above-referenced free trade agreements (FTAs) where they are unable to confirm qualification at the time of entry. Using the Reconciliation program, importers will electronically flag as-yet-unqualified imports at the time of entry. Presuming the requisite supporting information becomes available within 12 months of the date of entry, importers can then file a Reconciliation entry to make their duty preference claim and receive corresponding duty refunds. Importers who are not yet part of the Reconciliation program, but would like to take advantage of these expanded opportunities, must apply to participate by submitting the requisite application to CBP Headquarters.

CBP has been utilizing the Reconciliation Prototype program since 1998 as part of its National Customs Automation Program Reconciliation provides importers an automated mechanism to identify at the time of entry certain undeterminable information (that does not affect admissibility), and provide that information at a later date through an entry-by-entry or aggregate filing. Importers identify this provisional information by placing an electronic “flag” at the time the entry summary is filed. Prior to expansion to allow for various post-entry FTA claims, importers could only flag information relating to: 1) value issues other than claims based on manufacturing defects; 2) classification issues, on a limited basis; 3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS); and 4) issues concerning merchandise entered under the **North American Free Trade Agreement (NAFTA)**.

The expansion of the Reconciliation program to these additional FTAs is consistent with the original opportunities to file post-entry NAFTA claims, as well as previous expansion of the Reconciliation program to include the U.S.-Chile Free Trade Agreement and the Dominican Republic-Central America-U.S. Free Trade Agreement. As importers have experienced with Reconciliation for NAFTA, allowing for post-importation duty claims under these new trade agreements allows for a streamlined

mechanism for filing post-entry refund claims, and allows importers to file potentially thousands of post-entry claims under a single Reconciliation entry and receive a single duty refund check from CBP in response.

Importers may elect not to file their post-entry duty preference claims via the Reconciliation prototype, and expansion of the program does not prohibit importers from continuing to file post-entry claims using traditional processes in accordance with 19 U.S.C § 1520(d). However, once an importer flags an entry summary indicating that it may pursue post-importation duty preference claims via the Reconciliation process, the importer locks itself into the process and waives its rights to file a traditional paper filing pursuant to 19 U.S.C. § 1520(d). If, after having flagged the entry, an importer fails to file a post-entry Reconciliation claim under one of the approved FTAs, the importer will not be assessed liquidated damages for a late file or no file Reconciliation (which can happen for post-entry valuation adjustments that are flagged but not reconciled). Rather, the flagged FTA entry will simply liquidate at the end of the 12-month period as entered, i.e., with the payment of duties and fees.

Reconciliation can be an effective trade compliance and risk management tool. Among other things, it allows importers to streamline multiple post-entry FTA claims, and can also serve as a compliance vehicle to flag undetermined or provisional values at the time of entry – providing an automated method to make entry corrections or adjustments once the relevant information has been finally determined. The extension of the Reconciliation Prototype to these additional FTAs provides importers with additional tools to manage their duty preference programs.

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