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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of the National Customs Automation Program Test (NCAP) Regarding Reconciliation for Filing Certain Post-Importation Claims

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces a modification to the Automated Commercial System (ACS) National Customs Automation Program (NCAP) Reconciliation prototype test to include the filing of post-importation preferential tariff treatment claims arising under the United States-Oman Free Trade Agreement Implementation Act, the United States-Peru Trade Promotion Agreement Implementation Act, the United States-Korea Free Trade Agreement Implementation Act, the United States-Colombia Trade Promotion Agreement Implementation Act, and the United States-Panama Trade Promotion Agreement Implementation Act. Other than the modification in this notice, the test remains the same as set forth in previously published **Federal Register** notices.

DATES: The test is modified to allow Reconciliation of post-importation preferential tariff treatment claims to be filed on or after [INSERT 90 DAYS AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] on those free trade agreements or

trade promotion agreements listed in this notice. The Reconciliation prototype test commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in this test will be accepted throughout the duration of the test.

ADDRESS: If interested in joining the on-going Reconciliation prototype test, please send either an email expressing interest to participate in this test to

OFO-RECONFOLDER@cbp.dhs.gov, with a subject line identifier reading,

“Participation in Reconciliation Test”, or a letter addressed to Mr. Russell Morris, Entry Summary and Drawback Branch, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, 1400 L Street NW, 4th Floor, Washington, DC 20229-1143. Please note that comments concerning this test program may be submitted any time during the test via email, with a subject line identifier reading, “Comment on NCAP test”, to OFO-RECONFOLDER@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Entry Summary and Drawback Branch, Trade Policy and Programs, Office of International Trade at (202) 863-6543.

SUPPLEMENTARY INFORMATION:

Background

This document announces a modification to the U.S. Customs and Border Protection’s (CBP’s) Automated Commercial System (ACS) Reconciliation prototype test by adding the processing of post-importation claims for certain free trade agreements and trade promotion agreements that permit an importer, who did not claim tariff benefits at the time of importation, to file a claim for a refund of any excess duties, taxes, and/or

fees paid, at any time within one-year after the date of importation of the good. This modification works toward the goal of CBP's movement toward a paperless environment.

Purpose of the test

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Public Law 103-182, 107 Stat. 2057 (December 8, 1993)), is currently being tested by U.S. Customs and Border Protection (CBP) under the CBP Automated Commercial System (ACS) Prototype Test. CBP announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in subsequent **Federal Register** notices:

63 FR 44303, published on August 18, 1998; 64 FR 39187, published on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001; 67 FR 61200, published on September 27, 2002 (with a correction document published at 67 FR 68238 on November 8, 2002); 69 FR 53730, published on September 2, 2004; 70 FR 1730, published on January 10, 2005; 70 FR 46882, published on August 11, 2005 and 71 FR 37596, published on June 30, 2006. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

This document announces a modification to the Reconciliation test to expand Reconciliation to include post-entry importation preferential tariff treatment claims arising under the United States-Oman Free Trade Agreement Implementation Act, the United States-Peru Trade Promotion Agreement Implementation Act, the United States-

Korea Free Trade Agreement Implementation Act, the United States-Colombia Trade Promotion Agreement Implementation Act, and the United States-Panama Trade Promotion Agreement Implementation Act which are permitted under 19 U.S.C. 1520(d). Aside from this modification, the test remains as set forth in the previously published **Federal Register** notices.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. Additional information regarding the test can be found at

http://www.cbp.gov/xp/cgov/trade/trade_programs/reconciliation/participate.xml.

Reconciliation Generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic “flag” which is placed on the entry summary at the time the entry summary is filed and payment (applicable duty, taxes, and fees) is made. Previously published **Federal Register** documents have set forth that the issues for which an entry summary may be “flagged” (for the purpose of later reconciliation) are limited and relate to: (1) Value issues other than claims based on latent 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) (9802 issues); and (4) issues concerning merchandise entered under the North American Free Trade Agreement

(NAFTA issues/claims), under the United States-Chile Free Trade Agreement (CFTA or Chile issues/claims) and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR issues/claims) that are eligible for treatment under 19 U.S.C. 1520(d).

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (See the February 6, 1998 **Federal Register** notice for a more detailed presentation of the basic Reconciliation process.)

CBP reminds test participants that the filing of a Reconciliation entry, like the filing of a regular consumption entry, is governed by 19 U.S.C. 1484 and can be done only by the importer of record as defined in that statute.

Test Modification

The Agreements and the Implementation Acts

United States-Oman Free Trade Agreement Implementation Act

The United States-Oman Free Trade Agreement (OFTA) was entered into by the governments of Oman and the United States. On September 26, 2006, the United States Congress approved the OFTA in the United States-Oman Free Trade Agreement Implementation Act (the OFTA Act), Public Law 109-283; 120 Stat. 1191; 19 U.S.C. 3805 note. The OFTA Act allowed for OFTA to take effect on or after January 1, 2007,

with the actual implementation date to be determined by the President. Sections 201 and 202 of the OFTA Act authorize the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods of Oman provided for under the OFTA.

Presidential Proclamation 8332, dated December 29, 2008 and published in the **Federal Register** on December 31, 2008, implemented the OFTA for goods entered or withdrawn from warehouse for consumption on or after January 1, 2009. The Proclamation incorporated, by reference, Publication 4050 of the United States International Trade Commission (USITC). Annex I of Publication 4050 of the USITC, amends the Harmonized Tariff Schedule (HTS) by adding a new General Note (GN) 31 containing specific information regarding the OFTA and a new Subchapter XVI to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the OFTA. Annex II of Publication 4050 amends the HTS to provide for immediate and staged tariff reductions. The CBP regulations on the United States-Oman Free Trade Agreement were published in the **Federal Register** (76 FR 65365) on October 21, 2011. By participating in the Reconciliation test, the following regulatory procedures, namely, 19 CFR 10.869-10.871, concerning the paper procedures for filing a post-importation claim for preferential tariff treatment, are waived. This is to prevent duplicative filings for the same underlying entry summaries.

United States-Peru Trade Promotion Agreement Implementation Act

The United States-Peru Trade Promotion Agreement Implementation Act (PTPA) was entered into by the governments of Peru and the United States. On

December 14, 2007, the United States Congress approved the PTPA in the United States-Peru Trade Promotion Agreement Implementation Act (the PTPA Act), Public Law 110-138; 121 Stat. 1455; 19 U.S.C. 3805 note. The PTPA Act allowed for the PTPA to take effect on or after January 1, 2008, with the actual implementation date to be determined by the President. Sections 201, 202, and 203 of the PTPA Act authorize the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods provided for under the PTPA.

Presidential Proclamation 8341, dated January 16, 2009 and published in the **Federal Register** on January 22, 2009 (74 FR 4105), implemented the PTPA for goods entered, or withdrawn, from warehouse for consumption on or after February 1, 2009. The Proclamation incorporated, by reference, Publication 4058 of the USITC. Annex I of Publication 4058 amends the HTS by adding GN 32 containing specific information regarding the PTPA and a new Subchapter XVII to Chapter 99 to provide for temporary TRQs implemented by the PTPA. In addition, new provisions have been added to Subchapter XXII to Chapter 98. Annex II of Publication 4058 amends the HTS to provide for immediate and staged tariff reductions. CBP published regulations on the United States-Peru Trade Promotion Agreement in the **Federal Register** (77 FR 64031) on October 18, 2012. By participating in the Reconciliation test, the following regulatory procedures, namely, 19 CFR 10.910-10.912, concerning the paper procedures for filing a post-importation claim for preferential tariff treatment, are waived. This is to prevent duplicative filings for the same underlying entry summaries.

United States-Korea Free Trade Agreement

The United States-Korea Free Trade Agreement (UKFTA) was entered into by the governments of Korea and the United States. On October 21, 2011, the United States Congress approved the UKFTA in the United States - Korea Free Trade Agreement Implementation Act (the UKFTA Act), Public Law No. 112-41, 125 Stat. 428 (codified at 19 U.S.C. 3805 note (2012)), and it was signed into law on October 21, 2011. The UKFTA Act allowed for the UKFTA to take effect on or after January 1, 2012, with the actual implementation date to be determined by the President. Section 201 of the UKFTA Act authorizes the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods provided for in the UKFTA.

Presidential Proclamation 8783, dated March 6, 2012 and published in the **Federal Register** on March 9, 2012, implements the UKFTA for goods entered or withdrawn from warehouse for consumption, on or after March 15, 2012. The Proclamation incorporated, by reference, Publication 4308 of the USITC. Annex I of Publication 4308 amends the HTS by adding GN 33 containing specific information regarding the UKFTA and a new Subchapter XX to Chapter 99 to provide for TRQs implemented by the UKFTA. In addition, new provisions have been added to Subchapter XXII to Chapter 98. Annex II of Publication 4308 amends the HTS to provide for immediate and staged tariff reductions. CBP published regulations on the United States-Korea Free Trade Agreement in the **Federal Register** (77 FR 15948) on March 19, 2012. By participating in the Reconciliation test, the following regulatory procedures, namely, 19 CFR 10.1010-10.1012, concerning the paper procedures for filing a post-importation

claim for preferential tariff treatment, are waived. This is to prevent duplicative filings for the same underlying entry summaries.

United States-Colombia Trade Promotion Agreement

The United States-Colombia Trade Promotion Agreement (CTPA) was entered into by the governments of Colombia and the United States. On October 21, 2012, the United States Congress approved the CTPA in the United States – Colombia Trade Promotion Agreement Implementation Act (the CTPA Act), Public Law 112-42, 125 Stat. 462. The CTPA Act allowed for the CTPA to take effect on or after January 1, 2012, with the actual implementation date to be determined by the President. Section 201 of the CTPA Act authorizes the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods provided for in the CTPA.

The President issued a Proclamation implementing the CTPA on May 14, 2012, for goods entered, or withdrawn from warehouse for consumption, on or after May 15, 2012. The Proclamation incorporated, by reference, Publication 4320 of the USITC. Annex I of Publication 4320 amends the HTS by adding GN 34 containing specific information regarding the CTPA and a new Subchapter XXI to Chapter 99 to provide for temporary TRQs implemented by the CTPA. In addition, new provisions have been added to Subchapter XXII to Chapter 98. Annex II of Publication 4320 amends the HTS to provide for immediate and staged tariff reductions. CBP published interim final regulations on the United States-Colombia Trade Promotion Agreement in

the **Federal Register** (77 FR59064) on September 26, 2012. By participating in the Reconciliation Test, the following regulatory provisions, namely, 19 CFR 10.3010-10.3012, concerning the paper procedures for filing a post-importation claim for preferential tariff treatment, are waived. This is to prevent duplicative filings for the same underlying entry summaries.

United States-Panama Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (PANTPA) was entered into by the governments of Panama and the United States. On October 21, 2011, the United States Congress approved the PANTPA in the United States – Panama Trade Promotion Agreement Implementation Act (the PANTPA Act), Public Law No. 112-43, 125 Stat. 497. The PANTPA Act allowed for the PANTPA to take effect on or after January 1, 2012, with the actual implementation date to be determined by the President. Sections 201 and 203 of the PANTPA Act authorize the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods provided for under the PANTPA.

The President issued Proclamation 8894 implementing the PANTPA on October 29, 2012, for goods entered, or withdrawn from warehouse for consumption, on or after October 31, 2012. The Proclamation incorporated, by reference, Publication 4349 of the USITC. Annex I of Publication 4349 amends the HTS by adding GN 35 containing specific information regarding the PANTPA and a new Subchapter XXI to Chapter 99 to provide for temporary TRQs implemented by the PANTPA. In addition, new provisions have been added to Subchapter XXII to Chapter 98. Annex II of Publication 4349 amends the HTS to provide for immediate and staged tariff reductions.

Regulations are currently being drafted to implement the PANTPA, and like the other agreements, the applicable regulatory provisions covering paper procedures for filing a 1520(d) claim will be waived under the test.

Ordinary OFTA, PTPA, UKFTA, CTPA, and PANTPA Post-Importation Claim
under 19 U.S.C. 1520(d)

A claim for preferential tariff treatment for an originating OFTA, PTPA, UKFTA, CTPA, and PANTPA good, in accordance with their respective Act and applicable procedures as set forth above (see also Subparts P, Q, R, S, and T of 19 CFR Part 10), is made at the time of entry summary. (See respective GN, HTS, for rules of origin.) However, in some instances, an importer may not be able to make the claim at that time, usually because the importer does not possess all the information or documentation required. In those instances, an importer may make a post-importation OFTA, PTPA, UKFTA, CTPA, and PANTPA claim under 19 U.S.C. 1520(d) (section 1520(d)), pursuant to amendments to that section made by the respective free trade agreements Act. Under these amendments to section 1520(d), entries of goods qualifying under OFTA, PTPA, UKFTA, CTPA, and PANTPA rules of origin are eligible for re-liquidation when preferential tariff treatment under OFTA, PTPA, UKFTA, CTPA, and PANTPA is not claimed at the time of importation, notwithstanding that a protest under 19 U.S.C. 1514 (section 1514) is not timely filed. (A section 1514 protest is a means of objecting to, among other things, the liquidation of an entry by filing the protest within 180 days of the liquidation (or other protestable decision or action by CBP).) A claimant must file a claim under section 1520(d) within one year of the applicable importation and meet other requirements, such as applicable documentary requirements, including (when

requested by CBP) the filing of a certification or information demonstrating that the entered goods are originating OFTA, PTPA, UKFTA, CTPA, and PANTPA goods.

Post-Importation OFTA, PTPA, UKFTA, CTPA, and PANTPA Claim under Reconciliation

This notice announces that a post-importation claim for preferential tariff treatment under section 1520(d) for an entry filed pursuant to the OFTA, PTPA, UKFTA, CTPA, and PANTPA also may be made under the Reconciliation test, in the same way as a post-importation NAFTA, Chile or CAFTA-DR claim also may be made (see, respectively, notices published in the **Federal Register** on September 27, 2002, September 2, 2004, and June 30, 2006, cited previously). This alternative requires that an importer follow the Reconciliation test procedure which, in contrast to the ordinary section 1520(d) procedure described above, requires action at the time of entry. That action is to flag the entry summary for the OFTA, PTPA, UKFTA, CTPA, and PANTPA issue(s), which will be followed later by the filing of a Reconciliation entry within one year of the applicable importation. It is noted that OFTA, PTPA, UKFTA, CTPA and PANTPA Reconciliation entries cannot include other Reconciliation-eligible issues; i.e., an OFTA, PTPA, UKFTA, CTPA, and PANTPA Reconciliation entry is limited to covering only OFTA, PTPA, UKFTA, CTPA, and PANTPA issues (claims). NAFTA, Chile or CAFTA-DR Reconciliation entries/claims are similarly limited.

This OFTA, PTPA, UKFTA, CTPA, and PANTPA Reconciliation alternative is available for eligible importations involving any eligible OFTA, PTPA, UKFTA, CTPA,

and PANTPA country 90 days after the date this notice is published in the **Federal Register**.

Reconciliation OFTA, PTPA, UKFTA, CTPA, and PANTPA Claim Precludes

Claims by Other Means

CBP emphasizes that once an importer flags an entry summary for OFTA, PTPA, UKFTA, CTPA, and PANTPA issues for Reconciliation, indicating that it is pursuing the post-importation, section 1520(d) claim through the Reconciliation process, the only means of perfecting the OFTA, PTPA, UKFTA, CTPA, and PANTPA claim is by completing the Reconciliation process by filing a timely Reconciliation entry. (See the September 27, 2002, **Federal Register** notice for an explanation of this same limitation relative to NAFTA and Chile issues.) By flagging the entry summary, the importer makes a commitment to perfect the claim only through the Reconciliation process--to, in effect, waive filing the claim any other way. Thus, once entries have been flagged for Reconciliation of OFTA, PTPA, UKFTA, CTPA, and PANTPA issues, CBP will not accept a claim filed for those entries under the ordinary section 1520(d) procedure. This will prevent dual filings for the same underlying entry summaries.

Benefits of Reconciliation

Finally, CBP recommends the use of the Reconciliation test procedure which provides the importer with several benefits. First, using the test procedure is a simpler means of filing claims: i.e., the importer is able to make potentially thousands of OFTA, PTPA, UKFTA, CTPA, and PANTPA claims on one Reconciliation entry.

Second, the importer can receive one check from CBP rather than many (even up to thousands) upon CBP's liquidation of a Reconciliation entry and issuance of a refund.

Third, because processing OFTA, PTPA, UKFTA, CTPA, and PANTPA claims under Reconciliation is simpler for CBP, the refund delivery system is more efficient.

Date: May 7, 2013

Allen Gina

Assistant Commissioner

Office of International Trade

[FR Doc. 2013-11308 Filed 05/10/2013 at 8:45 am; Publication Date: 05/13/2013]