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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of the National Customs Automation Program (NCAP) Test Regarding Reconciliation for Filing Post-Importation Claims Arising under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)

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

ACTION: General notice.

SUMMARY: This document announces a modification to the Automated Commercial Environment (ACE) National Customs Automation Program (NCAP) reconciliation prototype test to include the flagging for filing of post-importation preferential treatment claims arising under the Agreement Between the United States of America, the United Mexican States, and Canada (the USMCA) as implemented pursuant to the United States-Mexico-Canada Agreement Implementation Act (the USMCA Act). Importers may file USMCA post-importation claims for refunds of certain duties assessed on merchandise that both qualifies for preferential tariff treatment under the USMCA and was entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. Unless and until the USMCA Act is subsequently amended, refunds for merchandise processing fees (MPF) are excluded from USMCA post-importation claims. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previously published *Federal Register* notices regarding the test remain in effect.

DATES: The test is modified to allow reconciliation of post-importation preferential tariff treatment claims to be filed on or after July 1, 2020, for refunds of certain duties assessed on merchandise that both qualifies for preferential tariff treatment under the USMCA and was entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

ADDRESSES: Comments concerning the reconciliation prototype test may be submitted via email to Randy Mitchell, Director, Commercial Operations, Revenue & Entry (CORE) Division, Office of Trade, U.S. Customs and Border Protection at OT-Reconfolder@cbp.dhs.gov, with a subject line identifier reading, “Modification of Reconciliation Test-USMCA”.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Randy Mitchell, Director, Commercial Operations, Revenue & Entry (CORE) Division, Office of Trade, U.S. Customs and Border Protection, at (202) 325-6532 or via email at OTReconFolder@cbp.dhs.gov, with a subject line identifier reading “Modification of Reconciliation Test-USMCA”. For technical questions related to ACE or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Tonya Perez, Director, Client Services Division, Office of Trade, U.S. Customs and Border Protection, at (571) 421-7477 or via email at gmb.clientrepoutreach@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

This document announces a modification to U.S. Customs and Border Protection’s (CBP’s) Automated Commercial Environment (ACE) reconciliation prototype test (hereinafter “reconciliation test”) by adding the processing of post-importation claims arising under the

United States-Mexico-Canada Agreement Implementation Act (the USMCA Act), Pub. L. 116-113, 134 Stat. 11 (January 29, 2020) (19 U.S.C. Chapter 29), to permit an importer, who did not claim preferential tariff treatment at the time of importation, to file a claim, at any time within one year after the date of importation of qualifying merchandise, to receive a refund of certain excess duties paid on that merchandise at the time of importation. As is further explained below, although the USMCA eliminates the assessment of the merchandise processing fee (MPF) on qualifying goods from Canada and Mexico, the USMCA Act excluded the refund of MPF under 19 U.S.C. 1520(d) post-importation claims for USMCA preferential treatment.

Purpose of the Reconciliation Test

Reconciliation, a planned component of the National Customs Automation Program (NCAP), is 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)) (19 U.S.C. 1411).

Section 637 of the Customs Modernization Act amended section 484 of the Tariff Act of 1930 to establish a new section (b), entitled “Reconciliation”, and a planned component of the NCAP. (19 U.S.C. 1484(b)). Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify indeterminable 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 of the applicable estimated duties is deposited.

Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95-21, 60 FR 14211 (March 16, 1995). The NCAP reconciliation test was announced 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 (August 18, 1998); 64 FR 39187 (July 21, 1999); 64 FR 73121 (December 29, 1999); 66 FR 14619 (March 13, 2001); 67 FR 61200 (September 27, 2002) (with a correction document published at 67 FR 68238 (November 8, 2002)); 69 FR 53730 (September 2, 2004); 70 FR 1730 (January 10, 2005); 70 FR 46882 (August 11, 2005); and 71 FR 37596 (June 30, 2006). On September 13, 2000, CBP extended the test indefinitely in a notice published in the *Federal Register* (65 FR 55326). On July 23, 2016, the NCAP test regarding reconciliation transitioned from the Automated Commercial System (ACS) to ACE. (83 FR 2645). This document announces a modification to the reconciliation test to expand reconciliation to include post-importation preferential tariff treatment claims arising under the USMCA Act, which is 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.

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 of the applicable estimated duties is deposited.

The flagged entry summary (the underlying entry summary) is liquidated by CBP for all aspects of the entry except those issues that were flagged. Upon liquidation of an underlying entry summary, any decision by CBP entering into that liquidation, *e.g.*, classification, may be protested pursuant to 19 U.S.C. 1514. The means of providing the outstanding information flagged on the underlying entry summary to be reconciled is through the filing of a reconciliation entry. A reconciliation entry is treated as an entry for purposes of liquidation, reliquidation, and protest.

When the outstanding information, *e.g.*, value as determined by the actual costs, is later furnished in the reconciliation entry, CBP will liquidate the reconciliation entry as to the flagged issues. Any adjustments in duties owed will be made at that time. (*See* February 6, 1998 *Federal Register* notice (63 FR 6257) for a more detailed presentation of the basic reconciliation process.) The liquidation of the reconciliation entry will be posted in the same manner and place as the notices of liquidation of other entries. Liquidation of a reconciliation entry may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for and contained in the reconciliation entry (*i.e.*, the protest may not address issues previously liquidated on the underlying entry summary).

Previously published *Federal Register* notices 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 post-importation claims, under 19 U.S.C. 1520(d), for preferential tariff treatment for merchandise entered under the acts implementing the North

American Free Trade Agreement (NAFTA), the United States-Chile Free Trade Agreement, the Dominican Republic-Central America-United States Free Trade Agreement, the United States-Oman Free Trade Agreement, the United States-Peru Trade Promotion Agreement, the United States-Korea Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, and the United States-Panama Trade Promotion Agreement.

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 an importer of record, who is required to exercise reasonable care in filing the underlying entry summary, flagging issues for later reconciliation, and filing the reconciliation entry. Importers are also reminded of the distinction between prior disclosure and reconciliation. A prior disclosure exists when a person discloses the circumstances of a violation of 19 U.S.C. 1592 pursuant to CBP regulations. The person disclosing this information must do so before, or without knowledge of, the commencement of a formal investigation of that violation. Under reconciliation, the importer is not disclosing a violation, but rather identifying information which is indeterminable and will be provided at a later time when the reconciliation entry is filed.

Modification of the Reconciliation Test

The Agreement Between the United States of America, the United Mexican States, and Canada (the USMCA) was entered into by the governments of the United States of America (United States), the United Mexican States (Mexico), and Canada on November 30, 2018. The USMCA was signed on December 10, 2019, and ratified by all three countries, with final ratification on April 24, 2020. The USMCA covers all merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

Section 103 of the USMCA Act authorizes the President to proclaim the tariff modifications and to promulgate the regulations for preferential tariff treatment and other customs related provisions of the USMCA. This notice announces that a post-importation claim under 19 U.S.C. 1520(d) for preferential tariff treatment pursuant to the USMCA may be made under the reconciliation test, but without a refund of merchandise processing fees (MPF) at this time.

1. Use of Current FTA Flag for USMCA Post-Importation Claims

Importers that file an entry for USMCA preferential treatment under the reconciliation test must use the existing Free Trade Agreement (FTA) flag, as authorized in this notice.

Section 205(a) of the USMCA Act provides for the reliquidation of entries. The USMCA Act repealed the NAFTA Implementation Act. Section 205(a) of the USMCA Act amends section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) by removing the reference to “section 202 North American Free Trade Agreement Implementation Act” and replacing it with “section 202 of the United States-Mexico-Canada Agreement Implementation Act (except with respect to any merchandise processing fees)”. Additionally, Section 205(a) amends the certification of origin requirement in 19 U.S.C. 1520(d) by removing “(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 1508(b)(1) of this title), or other certificates or certifications of origin, as the case may be; and” and replacing it with “(2) copies of all applicable certificates or certifications of origin; and”. Accordingly, Section 205 of the USMCA Act effectively replaces reliquidation of entries under NAFTA with the reliquidation of entries under the USMCA, eliminates the refund of MPF under USMCA post-importation preferential treatment claims, and replaces the requirement to submit a NAFTA certificate of origin with the requirement to submit any

applicable certificate or certification of origin as part of a post-importation preferential treatment claim (as discussed in Section 204 of the USMCA Act). Consistent with Section 205 of the USMCA Act, the importer must make a post-importation preference claim pursuant to 19 U.S.C. 1520(d), within one year from the date of importation. Post-importation claims for reconciliation are made electronically in ACE and must include the following:

1) A declaration stating that the good qualified as an originating good at the time of importation and the number and date of the entry or entries covering the good (this is provided as part of the electronic submission of the claim containing the special program indicator for the USMCA);

2) A statement indicating whether the entry summary or equivalent documentation was provided to any other person; and

3) A statement indicating whether a protest, petition, or request for re-liquidation has been filed relating to the good and identification of such filing(s).

Claims for preferential treatment under the USMCA may be made as of July 1, 2020. CBP is publishing an interim final rule (IFR) in the *Federal Register* (CBP Dec. 20-11) amending part 181 and adding a new part 182 containing several USMCA provisions, including an appendix that contains the trilaterally negotiated and agreed upon Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 (Rules of Origin) and Related Provisions in Chapter 6 (Textile and Apparel Goods) (Uniform Regulations regarding rules of origin) (Appendix A to part 182).

In addition to the IFR, persons intending to make USMCA preference claims as of July 1, 2020, may refer to the CBP website at <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA> for further guidance (including the U.S. USMCA Implementing Instructions). The United States International Trade Commission has also modified the HTSUS to add a new General Note 11, incorporating the USMCA rules of origin for claiming preferential treatment and providing for the special program indicators “S or S+” for the USMCA in the HTSUS “special” rate of duty subcolumn.¹ For ACE, please note that CBP will update the information on USMCA post-importation claims submitted via reconciliation in the Reconciliation Entry Summary Create/Update chapter of the CBP and Trade Automated Interface Requirements (CATAIR) posted on <https://www.cbp.gov/trade/ace/catair>.

2. Entry into Force of USMCA and Import Eligibility for Reconciliation

Section 205(a) of the USMCA Act further provides that these amendments (replacement of NAFTA preference from 19 U.S.C. 1520(d) with USMCA preference) will take place on the date on which the USMCA enters into force on July 1, 2020. Therefore, importers may file USMCA post-importation claims for refunds of certain duties assessed on merchandise that both qualifies for preferential tariff treatment under the USMCA and was entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

¹ The S+ indicator is used for certain agricultural goods and textile tariff preference levels (TPLs).

This notice does not modify the current reconciliation test, which waives the requirement to file a certification of origin for post-importation claims, under 19 U.S.C. 1520(d), for preferential tariff treatment for merchandise qualifying under the other agreements covered by the FTA flag. For reconciliation entries making a post-importation claim, under 19 U.S.C. 1520(d), for preferential tariff treatment for qualifying merchandise entered under the USMCA, a certification of origin is not required to be presented at the time of filing the reconciliation entry, but must be in the importer's possession at that time and must be presented if requested by CBP. The failure to present the certification of origin when requested by CBP may result in the denial of the post-importation claim for preferential tariff treatment under the USMCA, the reliquidation of the reconciliation entry, and/or administrative and judicial sanctions including, but not limited to, liquidated damages and recordkeeping or other penalties and may be considered misconduct under the rules, terms and conditions of this test.

Importers filing a reconciliation entry making a USMCA post-importation claim for preferential tariff treatment for a covered vehicle, as defined in the Appendix to Annex 4-B of Chapter 4 of the USMCA, are reminded that the following certifications must be filed with CBP in order to receive preferential tariff treatment: (1) a certification providing that the labor value content requirements are met; and, (2) a certification that the steel and aluminum content requirements are met. These certifications are not filed with the reconciliation entry, but would be separately submitted; and, this notice does not waive any requirements related to these certifications for purposes of the reconciliation test.

3. Transition from NAFTA Treatment-Reliquidation

Section 205 provides for a transition from NAFTA treatment. Consistent with this section, the amendments to 19 U.S.C. 1520(d), as discussed above, do not apply in the case of a good entered for consumption, or withdrawn from warehouse for consumption, before the date in which the USMCA enters into force, which is July 1, 2020. This section further provides that the section 1520(d), as it is in effect (on June 30, 2020) will apply, and shall continue to apply on or after that date with respect to the good. Therefore, importers may submit post-importation claims for NAFTA preference only for those goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020. Since importers may file post-importation claims at any time within one year after the date of importation, no post-importation claims for NAFTA preference will be accepted after June 30, 2021.

4. Ineligibility for Post-Importation Refunds of Merchandise Processing Fees

Section 203 of the USMCA Act, which amends Section 13031(b)(10) of the Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(10)), eliminates the refund of merchandise processing fees (MPF) for USMCA post-importation claims. That section also disallows the use of the Customs User Fee Account to refund MPF. Accordingly, not only are refunds of MPF not allowed, but there is also no mechanism available for CBP to refund MPF for goods that qualify for preferential treatment under the USMCA. Importers may,

however, wish to flag USMCA entries for the possibility of MPF refunds for a post-importation USMCA claim, as CBP will provide for refunds consistent with any legislative changes to 19 U.S.C. 1520(d). Importers are reminded that FTA reconciliation entries must be filed within 12 months of the earliest import date and that the FTA flag expires after 12 months.

Dated: June 26, 2020.

Brenda B. Smith,
Executive Assistant Commissioner,
Office of Trade.

[FR Doc. 2020-14200 Filed: 6/30/2020 8:45 am; Publication Date: 7/1/2020]