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DEPARTMENT OF THE TREASURY
Customs Service
Modification of National Customs Automation Program Test
Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On February 6, 1998, a general notice was published in the **Federal Register** announcing the Customs Automated Commercial System (ACS) Reconciliation Prototype test. Additional notices announcing modifications to the prototype were published on August 18, 1998, and July 21, 1999. This notice serves to make further modifications, as well as to announce operational aspects of the prototype not covered in the previous notices. These changes include, among other things, making the filing of NAFTA Reconciliations optional and announcing a liquidated damages process for late-filed and non-filed Reconciliations. Other aspects of the prototype test not affected by the changes announced in this notice remain the same.

DATES: The prototype testing period started on October 1, 1998. It will run for approximately two years from that date and may be extended. Applications to participate in the prototype will be accepted throughout the duration of the prototype. The liquidated damages provision and the change regarding optional filing of NAFTA Reconciliations set forth in this notice are effective on the date this document is published in the Federal Register.

ADDRESS: Written inquiries regarding participation in the prototype test should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Mailstop 5.2A, Washington, DC, 20229-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Don Luther at (202) 927-0915 or Ms. Shari McCann at (202) 927-1106.

SUPPLEMENTARY INFORMATION:

I. Administrative Procedure

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; Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype test. Customs announced and explained the prototype test (also referred to as the prototype or the test) in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998, which replaced all previous notices. A notice published in the **Federal Register** (63 FR 44303) on August 18, 1998, announced clarifications and operational changes. Further changes to the prototype were announced in a **Federal Register** (64 FR 39187) notice published on July 21, 1999. This notice announces additional changes. Except for the modifications herein specified, all other aspects of the test remain the same.

II. Background

Reconciliation is the process that allows an importer, at the time of entry summary, to identify undeterminable information (other than that affecting admissibility) to Customs and to provide that outstanding information at a later date. The means of providing that outstanding information at a later date is through the filing of a Reconciliation entry.

An importer indicates its intent to file a Reconciliation entry by Aflagging@ an entry summary and indicating which undeterminable issues will be covered and resolved in the Reconciliation. (The flagging is done electronically at the time of filing the entry summary. See the notice published in the **Federal Register** on August 18, 1998, for the two methods of flagging entry summaries: individual entry flag and

blanket flag.) Later, the importer files the Reconciliation entry that resolves only the issues that were specified as undeterminable in the flagged entry summary. The issues that may be covered for later resolution in a Reconciliation are: (1) value; (2) classification, on a limited basis; (3) value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS) (referred to as 9802 issues); and (4) merchandise entered under the North American Free Trade Agreement (NAFTA).

III. Filing of NAFTA Reconciliations Optional

A. Existing Requirements

As set forth in the **Federal Register** notice published on February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation to resolve and close out the issue(s) specified. Reconciliations covering a NAFTA eligibility issue, which cannot include other issues, are due within 12 months of the earliest import date of all entry summaries grouped on the Reconciliation. Reconciliations covering any of the other issues (alone or in combination) are due within 15 months of the earliest summary date of the entry summaries grouped on the Reconciliation.

B. Policy Discussion

The value, classification, and 9802 issues allowed under Reconciliation have a direct bearing on Customs ability to regulate the importation of merchandise and enforce the customs laws. For this reason, Customs will continue to require timely closure of these issues via timely filed Reconciliations and will issue liquidated damages claims against the importer in cases where this obligation is not met.

The function of NAFTA Reconciliations is to allow the importer to make a post-importation claim of NAFTA eligibility under [19 U.S.C. §1520\(d\)](#), which requires the filing of a claim thereunder within one year of importation. If a NAFTA Reconciliation is not filed within the 12 months allowed under the prototype, it simply means that no post-importation NAFTA claim can be filed timely under the statute, as the one-year time limit provided under [19 U.S.C. §1520\(d\)](#) will have expired.

Thus, the only consequence of a failure to file a NAFTA Reconciliation is the importer's loss of the benefit provided under the statute. By eliminating the formality of closing open NAFTA flags (entry summaries flagged to indicate the intended filing of a NAFTA Reconciliation) where no claims under 19 U.S.C. 1520(d) are being made, Customs hopes to further streamline the prototype and prevent unnecessary work by Customs personnel and the trade community.

C. Change in Requirement

Based on the foregoing policy considerations, upon publication of this notice, the filing of NAFTA Reconciliations (as opposed to Reconciliations covering other issues) will be optional. As before, importers wishing to make post-importation NAFTA claims under the Reconciliation process must do so via a timely filed NAFTA Reconciliation. However, as announced in this notice, NAFTA Reconciliations that are filed against flagged entry summaries past their 12-month deadline will simply not be accepted by Customs and liquidated damages claims will not be issued. Late-filed NAFTA Reconciliations may be refilled (electronically retransmitted) after removal of all entry summaries for which the deadline has passed, and NAFTA claims may be made against those entry summaries that were still within the 12-month deadline at the time of original Reconciliation filing.

D. Effect on Drawback

As mentioned in the previous **Federal Register** notices, drawback claims may not be made against flagged entry summaries (open flags) until all issues have been closed by a Reconciliation. This restriction was built into Customs automated system to ensure proper financial controls under drawback. Thus, when a Reconciliation is not filed, the entry summary remains flagged and drawback is precluded. Customs plans eventually to implement a mechanism to delete open NAFTA flags that are more than 12 months old (flagged entry summaries as to which the intended NAFTA Reconciliation was not filed). This will serve to enable drawback on those entry summaries flagged for NAFTA reconciliation that were not reconciled within the required 12 months. (Flagged entry summaries covering other issues will remain flagged until a Reconciliation is filed.)

The flag deletion capability for entry summaries flagged for NAFTA reconciliation will not be ready until spring, 2000. Until its implementation, drawback claims will not be accepted where NAFTA

Reconciliations were not filed for flagged entry summaries. Customs will notify filers when the flag deletion capability has been implemented. Reconciliations for NAFTA may still be filed timely, either with or without NAFTA claims being made, which will enable drawback on the entry summaries without delay.

IV. Definition of Reconciliation Filing Date

As described in the previous **Federal Register** notices, the Reconciliation entry comprises three components: the Header, the Association File, and the Summarized Line Item Data Spreadsheet. In order for a Reconciliation entry to be considered filed, all three of these components must be received by the Customs processing port assigned to the importer. Additionally, for NAFTA Reconciliations where NAFTA claims are being made, the statements specified in [19 CFR §181.32](#) are required. Accordingly, the actual filing date for each Reconciliation is the date when all of these required elements have been properly presented to Customs. This actual filing date will be used for determining whether Reconciliations were filed timely.

V. Liquidated Damages for Failure to File Reconciliations Timely

As described in this notice (subsection (C) of Section I), the filing of NAFTA Reconciliations is now optional. Accordingly, the liquidated damages provisions in this section apply only to value, classification, and 9802 Reconciliations. They do not apply to NAFTA Reconciliations.

A. Requirements

As described above and in the **Federal Register** notice of February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation within the allotted time, covering the flagged issue(s) on that entry summary. This notice removes the obligation to reconcile NAFTA eligibility for entry summaries flagged for that issue.

Each entry summary flagged for value, classification, and/or 9802 issues must be covered by a Reconciliation filed prior to the due date, 15 months from the earliest entry summary date of the underlying entry summaries. Up to 9,999 underlying entry summaries may be covered by a single Reconciliation. If any one of the underlying entry summaries' due dates has passed prior to Reconciliation filing, the entire Reconciliation is considered late. However, the importer and filer have discretion to determine which and how many entry summaries are grouped on a Reconciliation, regardless of the flagging method and timing involved in the original flagging of those entry summaries.

B. Liquidated Damages for Non-filed and Late-filed Reconciliations

The obligation to file Reconciliations created by the flagging of entry summaries carries liquidated damages implications for failure to do so timely. Each flagged entry summary remains an independent entity until reconciled. Customs has no way of knowing which entry summaries will be covered by a single Reconciliation until one is actually filed. Once the Reconciliation has been filed, the universe of entry summaries covered by it is established. Moreover, the Reconciliation is an entry in its own right and has the same legal status as other Customs entries. For these reasons, late-filing and non-filing of Reconciliations will be dealt with using different mechanisms.

C. Liquidated Damages Mechanisms

1. ANo File@ liquidated damages.

Periodically, Customs will perform research to identify flagged entries that were not reconciled timely (within 15 months of their date). In cases where flagged entry summaries are found to have not been covered by a Reconciliation, Customs will issue a single ANo File@ liquidated damages claim against the importer of record for all unreconciled flagged entries past their due dates for the calendar month.

Subsequent filing of Reconciliations to cover entries on this monthly consolidated liquidated damages report will result in mitigation of the initial liquidated damages claim.

2. ALate File@ liquidated damages.

In cases where flagged entry summaries are found to have been covered by a Reconciliation that was filed late, Customs will issue a single ALate File@ liquidated damages claim against the Reconciliation entry itself (as opposed to a claim against the importer that covers the calendar month, as in the case of ANo File@ liquidated damages claims). This mechanism applies also to Reconciliations, filed timely or not, where payment of additional monies (duties, taxes, fees, and interest) due is made late or not at all.

3. Where liquidated damages claims are processed.

Each importer participating in the ACS Reconciliation Prototype is assigned to a particular Reconciliation processing port. Liquidated damages claims involving Reconciliation will always be processed by the Reconciliation processing port. This is true regardless of the port(s) where the underlying entry summaries were filed.

D. Summary of Liquidated Damages Claims

There are five different types of liquidated damages violations under the ACS Reconciliation Prototype. The descriptions, assessed liquidated damages amounts, and Aoption 1@ amounts are shown below. AOption 1@ refers to the option where importers may agree to pay a reduced amount, but waive rights to mitigate the claim below that amount. The term Amoney@ in this listing refers to the additional duties, taxes, fees, and interest due upon Reconciliation.

1. Reconciliation No File

Description: Entry summaries flagged, but no Reconciliation filed. Customs will issue a single consolidated liquidated damages claim for all such instances for a given importer, per month, per surety. (For example, if an importer had flagged entry summaries covered by two sureties during one month, two separate consolidated liquidated damages claims would be issued, one covering entry summaries insured by one surety and the other covering entry summaries insured by the second surety.)
Assessed Liquidated Damages Amount: Total entered value of the underlying entry(ies).
Option 1 Amount: Not Applicable.

2. Reconciliation Money No File

Description: Reconciliation filed timely, but without payment of additional duties, taxes, fees, and interest due.
Assessed Amount: \$1,000 or double the duties, taxes, and fees due on the Reconciliation, whichever is greater.
Option 1 Amount: Not Applicable

3. Reconciliation Late File

Description: Reconciliation filed and paid after the 15-month deadline.
Assessed Amount: \$1,000 or double the duties, taxes, fees, and interest, if applicable, due on the Reconciliation, whichever is greater.
Option 1 Amount: \$500 + (Total duties, taxes, fees, and interest, if applicable, due on Reconciliation X number of days late X 0.1%).

4. Reconciliation Money Late File

Description: Reconciliation filed timely, but payment of additional duties, taxes, fees, and interest due submitted late.
Assessed Amount: \$1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.
Option 1 Amount: \$500 + (Total duties, taxes, fees, and interest due on Reconciliation X number of days payment is late X 0.1%).

5. Reconciliation Late File with Money No File

Description: Reconciliation filed late, without payment of duties, taxes, fees, and interest due.
Assessed Amount: \$1,000 or double the duties, taxes, and fees due on the Reconciliation, whichever is greater.
Option 1 Amount: Not Applicable.

E. Surety Issues

The liquidated damages claims that result from failure to file Reconciliations or filing them untimely may be for substantial amounts. Failure to resolve these claims could saturate the importer=s continuous bond. Thus, in certain circumstances, importers may be required to submit single entry bonds for further entry summaries or make live entry with payment to secure release of merchandise.

VI. Courtesy Notification of Impending Due Dates

Because of the serious consequences involved in not filing Reconciliations timely, Customs has been providing importers with lists of their flagged entry summaries upon request. However, workload considerations make this practice unsustainable. While the tracking and timely reconciliation of flagged entry summaries is solely the responsibility of the importer and filer, Customs appreciates the logistical burden of this task. For this reason, Customs is currently developing an Internet-based lookup system, where interested filers and importers can obtain the list of flagged entry summaries that are coming due in the upcoming months (referring to the Reconciliation filing due date (or deadline)). This system will provide entry summary numbers sorted two ways: by filer code and by an encrypted version of the importer of record number, which will be made available to the importer.

Importers who prefer that their entry numbers and flag codes not be made available via this mechanism may opt out by sending written notification to that effect to the Reconciliation Team at the address shown in the AAddress@ section of this notice. Such written notifications must be received by January 31, 2000. It is anticipated that this lookup system will be operational in spring, 2000. In the interim, the Reconciliation team will continue to provide filers with monthly lists of flagged entries coming due during the following month. Importers and filers retain the right to request data from Customs under the authority of the Freedom of Information Act (FOIA), for which monetary charges may be assessed.

VII. Conclusion

Regarding the ACS Reconciliation Prototype test generally, interested parties should consult the **Federal Register** notices of February 6, 1998 (63 FR 6257), August 18, 1998 (63 FR 44303), and July 21, 1999 (64 FR 39187). All terms and conditions set forth in those notices remain in effect, except as specifically modified or affected by this notice.

Dated: December 23, 1999

Charles W. Winwood
Assistant Commissioner, Office of Field Operations