

CUSTOMS-NOTES

Written by George R. Tuttle Law Offices for informational use by the trade and import community on selected topics of general interest concerning Customs and import related matters.

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Reconciliation: Is it Right For You?

On October 1, 1998, the U.S. Customs Service began a new prototype test program for reconciling entries. While reconciliation is not a new concept for Customs, until now, there has not been a consistent process for accepting corrected or updated entry information following the filing of the entry summary. Now, as a result of the Customs Modernization provisions of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993, Customs has the authority to wait and make post-entry summary adjustments, while liquidating the balance of the entry.

The new reconciliation process is important for brokers and importers to understand, because, according to Customs, this will be the **exclusive** means by which importers may amend or correct entry information in a post-import, pre-liquidation environment. (Reconciliation, however, will not preclude an importer from requesting suspension of liquidation, filing a prior disclosure or submitting a Supplemental Information Letter prior to liquidation of the entry.)

What is Reconciliation?

Reconciliation is simply the means by which an importer is able to correct information provided to Customs related to duty, classification, or value, following the filing of the entry summary.

The new process is unique in that entry information that has not been flagged for reconciliation will be liquidated through the normal liquidation cycle, and the information flagged for reconciliation will be held pending submission of the unknown information.

In order to do this, Customs has created a new type of entry, referred to as a reconciliation entry. Like its more traditional brother, a reconciliation entry is subject to liquidation and protest.

However, an importer may only contest those issues that are directly related to the decision of Customs associated with that liquidation. For example, if an entry covers merchandise that is subject to an "assist" that is not known at the time of importation, the importer can indicate to Customs that information contained in the entry related to value is unknown, and pay estimated duties. Customs will proceed with the liquidation of the entry, except for the determination of final valuation. Later, when the assist information is known, the importer furnishes Customs with a reconciliation statement, and pays any additional duties owing as a result of a higher declared value. The reconciliation statement is treated as an entry, and liquidated. The decision of Customs pertaining only to the information contained in the liquidated reconciliation is the proper subject of a protest.

When is Reconciliation Appropriate?

It is expected that Reconciliation shall be used by importers who make periodic cost adjustments in the price of imported goods, or have additions to the value of imported goods (assists or additional payments) that are not known at the time of import.

Customs has also indicated that reconciliation is available for importers with classification issues before Customs, and as a vehicle for importers to file post-entry NAFTA claims.

Reconciliation is also available for importers who wish to make a 9802 claim for U.S. origin goods assembled abroad, but do not have sufficient information at the time of entry to assert a complete claim.

Why Have Reconciliation?

The Customs laws obligate an importer to use reasonable care when filing entry documents, and to ensure that the information contained

therein is accurate and correct with respect to the amount of duty owed, the value of the merchandise imported, and its correct tariff classification.

The filing of an entry with incorrect information can amount to a violation of Section 592 of the Tariff Act of 1930, as amended (19 U.S.C. § 1592), and subject the importer to monetary penalties. In fact, in *United States v. Hitachi America Ltd., and Hitachi Ltd.*, CIT Slip Op. 97-46 (April 15, 1997) (*Appeal pending*), an importer was penalized \$1.5 million for not telling Customs that the declared value of merchandise was incorrect at the time of entry, when it had reason to know that there were additional, but unknown, charges associated with the merchandise.

"Section 1485 of the Customs laws obligates importers to report 'at once' any receipts showing that the price declared on the invoice was incorrect." "If the importer wishes to avoid this [obligation] ..." said the court, "it may arrange to hold open the liquidation under ... §1504(b)," or it may "deposit estimated duties ... and when the merchandise is liquidated ..." seek refunds or make any additional payments found due. *United States v. Hitachi America Ltd., and Hitachi Ltd.*, CIT Slip Op. 97-46

Reconciliation allows for an importer to notify Customs that certain information (such as value) is not known at the time it files the entry, and permits the importer sufficient time to collect and finalize its information and to submit the new information to Customs without fear of penalties.

Existing Methods of Reconciliation Are Inadequate

According to Customs, the new procedure was needed because of a lack of uniformity by Ports with respect to other procedures intended to reconcile entry information.

Under previous practices, importers had to notify Customs at the port of entry that information contained therein was incomplete, and request that liquidation of the entry be extended pending submission of the correct information. The importer would then submit a detailed cost submission and reconciliation report (generally, for the previous fiscal year), and Customs would apply the valuation adjustment to a few representative entry summaries. (Customs considered it too time

consuming to manually adjust each entry based on the final cost submission.) This process, however, is considered inadequate because it does not sufficiently allow for, and properly allocate, decreases or increases in value to all of the articles imported during the period covered by the cost submission. It also presents significant legal problems for Customs and importers if the importer later wishes to contest the final computation of valuation determined by Customs to apply, or to claim drawback on the new amount. The block method is also inadequate because the adjustment is not made to each applicable line item of merchandise on an entry affected by the cost revision, a process which most Ports refuse to do, because it is too time consuming.

Other methods of adjusting entries include voluntary tenders, prior disclosure, Supplemental Information Letters, protests, and 520(c)(1) requests, all of which have significant limitations in their applicability to reconciliation.

The ACS Reconciliation Prototype

As of October 1, 1998, ACS Reconciliation is the exclusive means to reconcile entries, and existing local procedures for block liquidation is no longer permitted.

Using Customs' ACS program, reconciliation will be allowed for the following issues:

- Value (Additions, Assists, Royalties, etc.)
- HTS 9802 Value
- Classification
- NAFTA eligibility

It is expected that Reconciliation will be the exclusive means for importers to make post-entry summary adjustments for these items. Importers will still have the option, however, to request that Customs withhold liquidation of an entry under 19 U.S.C. 1504(b), and make adjustments to the entry individually, or submit a Supplemental Information Letter (see ABI administrative message #97-0727, dated 08/04/1997) to correct minor factual errors prior to liquidation.

The ACS Reconciliation Process

To participate in ACS Reconciliation, an importer will need to apply for the program and post a reconciliation bond. When the application is approved, the importer will be assigned a reconciliation processing port and port code. When the

importer files the reconciliation, the processing port code will be used for that ABI transmission. (Customs expects that eventually, reconciliations will be filed at any port; however, for the first phase, reconciliations will be processed only at certain ports.¹)

Identifying Entries for Reconciliation

The key to the ACS Reconciliation process is that the entry filer must know in advance of filing the entry that it will need to be the subject of a reconciliation. Then, when the filer electronically files the entry, a special heading designation is to be used that will electronically "flag" the entry for reconciliation.

Entries can also be flagged as a group (a blanket application). The blanket application automatically flags all entry summaries for a specified time period. A request for a blanket application must be submitted to Customs in writing, and specify the importer of record number, the period of time involved, and the issue(s) subject to reconciliation. Customs will then generate an electronic flag for **all** entry summaries filed within the specified scope of the request.

When Must A Reconciliation be Filed?

A Reconciliation is due within 12 months of the earliest entry import date for a NAFTA Reconciliation request, or within 15 months of the earliest entry summary date for all other issues.

When the reconciliation is filed, the payment of additional duties, taxes, fees, and interest (or claim for refund) is made. The reconciliation is processed, subject to verification, if necessary, and liquidated.

A reconciliation is treated like any other Customs entry for purposes of liquidation and protest.

Filing a Reconciliation

There are two options in filing for reconciliation: the Entry-by-Entry Method, and the Ag-

gregate Basis Method. While the aggregate basis method may involve less work, there are significant limitations.

1. The Entry-by-Entry Method

Reconciliation may be filed with data showing Entry-by-Entry adjustments to duties, taxes, and fees. This method is available for both increases and decreases in the amount of duty found owing as a result of a reconciliation. Drawback privileges are also retained on both the underlying entries and the reconciled adjustment.

2..... The Aggregate Basis Method.

For fiscal control reasons, the Aggregate method will be allowed only when the Reconciliation results in an increase, or no change, in duties, taxes, and fees.

The Aggregate basis method is not appropriate for refunds. Similarly, drawback claims against the reconciled amount will not be accepted. (The original underlying entry information remains eligible for drawback once the Reconciliation has been filed.)

Special NAFTA Issues

Due to NAFTA's unique nature and different filing requirements, NAFTA reconciliations may not be combined with other issues on the same reconciliation.

Multiple Reconciliations

Each entry summary may have up to two reconciliations. For instance, one reconciliation can be filed to resolve a classification issue, and then the second reconciliation can be filed for a NAFTA claim, or a valuation issue.

As the second reconciliation will be processed using the amounts declared on the first reconciliation, it will be important that the filer consider the affect of statements made in the first reconciliation before filing the second reconciliation.

How Drawback Privileges Are Affected By Reconciliation

Drawback claims will not be accepted on an entry flagged for reconciliation until the reconciliation is filed.

¹ The twelve designated processing ports are: Boston, Champlain, Detroit, El Paso, Laredo, Miami, Minneapolis, New York, Nogales, Pharr, Portland, and San Diego.

Under Entry-by-Entry Reconciliation, full drawback is allowed on **both** the estimated duties paid at the time of summary **and** any increased adjustment resulting from the reconciliation (once the reconciliation is filed with the final duties, taxes, and fees deposited).

Under Aggregate Reconciliation, drawback is allowed on the amounts deposited at the time of filing the entry, but, drawback will not be allowed on additional amounts tendered with the reconciliation.

Summary

Customs expects importers to use the new ACS reconciliation procedures whenever there are unresolved issues regarding NAFTA eligibility and valuation. In addition, reconciliation offers importers interesting alternatives to resolving classification issues short of filing protests.

Reconciliation, however, requires that importers be aware of Customs issues before the merchandise is entered, and to address those issues at that time.

According to Customs, entries flagged for reconciliation must be reconciled even if the reconciliation results in no change in duties. How-

ever, merely because an importer has assists, it does not mean that a reconciliation is necessary. Reconciliation is only necessary if the exact value of the assist is unknown at the time of entry. If the importer is sure that all appropriate charges are included in the declared value, then the entry does not need to be flagged for reconciliation.

Importers who make year-end cost adjustments in the price of imported goods with suppliers, use transfer pricing between related parties, or have additions to the value of imported goods (assists or additional payments) that are not known at the time of import need to take a close look at how the new ACS reconciliation procedure will affect their imports, particularly with respect to how reconciliation will be performed (entry-by-entry or aggregate method), and the affect of that choice on the importer's ability of obtain a refund of estimated duties paid.

More Information

Additional information on Customs' ACS Reconciliation program is available in Customs' ACS Reconciliation Handbook, by visiting the reconciliation page of Customs' Web Site, at www.customs.ustreas.gov, or by contacting your customs broker, or our office.

For additional information on this subject or for additional copies of this publication contact:

George R. Tuttle Law Offices
Three Embarcadero Center, Suite 1160
San Francisco, CA 94111
Phone (415) 986-8780 Fax (415) 986-0908

E-mail address: geo@tuttlelaw.com S:\DOC\NEWSLTR\reconcile2.doc