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Washington, DC 20229

U.S. Customs and
Border Protection

AUG 11 2014

APP-7 OT:TPP:TA FP

MEMORANDUM FOR: Directors, Field Operations

FROM: Executive Director
Trade Policy and Programs
Office of International Trade

SUBJECT: GUIDANCE: Post-importation Claims for Preferential Tariff Treatment

The purpose of this memorandum is to provide you with guidance concerning acceptable methods for submission of post-importation preference claims, in light of certain judicial decisions.

BACKGROUND

Historically, importers have used various post-importation mechanisms to claim duty preferences under various free trade agreements, trade preference legislation, and certain tariff provisions in Chapter 98, Harmonized Tariff Schedule of the United States. These mechanisms include Post-Entry Amendments (PEAs), Post Summary Corrections (PSCs), protests in 19 USC 1514 and post-importation claims in 19 USC 1520(d).

Several court decisions[1] have held that the protest mechanism set forth in 19 USC 1514 may not be used to make a preference claim, inasmuch as the liquidation of an entry "as entered" (without a claim) is not a "protestable decision". Headquarters Ruling Letter H193959, dated July 30, 2012, also discussed the court cases' holding limiting use of protests for preference claims.

However, the implementing legislation for several preference programs specifically provides for post-importation claims, set forth in 19 USC 1520(d), and such claims are the only appropriate mechanism to seek preference when not claimed at the time of entry. This legislation allows post-importation claims for a one-year period after the date of importation.

Customs and Border Protection has completed a review concerning which methods are available to make claims after entry for those preference programs that **do not** specifically provide for post-importation claims under 19 USC 1520(d). If a preference program does not have a

[1] *Xerox Corp. v. U.S.*, 423 F.3d 1356 (2005), and *Corrpro Companies, Inc. v. U.S.*, 433 F.3d 1360 (2006)

statutory post-importation mechanism, an importer may utilize the PEA or PSC method to make a claim after importation.

For clarity and ease of reference, below is a table of the existing preference programs and the method by which a claim may be made after importation.

19 USC 1520(d)		PEA or PSC		
CAFTA-DR	NAFTA	AGOA	Civil Aircraft Agreement	Jordan FTA
Chile FTA	Oman FTA	Australia FTA	GSP	Morocco FTA
Colombia TPA	Panama TPA	Bahrain FTA	Insular Possessions	Pharmaceutical Products Agreement
Korea FTA	Peru TPA	CBERA	Israel FTA	
		CBTPA	Uruguay Round Concession on Intermediate Chemicals for Dyes	Singapore FTA

GUIDANCE

The court cases referenced above state that failure to claim preference timely does not give rise to a right to protest. Therefore, importers cannot avail themselves of the protest mechanism in 19 USC 1514 to submit initial claims for preference. Protests filed which are initial preference claims will be rejected by indicating “rejected as non-protestable” in block 18 of CBP Form 19.

For preference programs that by law, have a post-importation provision, a 1520(d) post-importation claim remains the only appropriate mechanism to seek preference when not claimed at the time of importation.

For programs that do not contain a 1520(d) provision, Customs and Border Protection will continue to allow unliquidated entries to be amended by filing a PEA or PSC prior to liquidation in accordance with current PEA and PSC procedures. In conformance with the aforementioned judicial decisions, we note that amendments filed after liquidation will not be treated as protests under 19 USC 1514. Nor will they be regarded as evidence warranting reliquidation under 19 USC 1501.

The Office of International Trade will be revising all internal and external guidelines applicable to preference programs to reflect the judicial decisions described above. This memorandum supersedes any conflicting guidance previously published, including, but not limited to, implementing instructions for free trade agreements, the *FTA Guidelines*, and the *Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs*.

Copies of this memorandum should be made available to Port Directors, Assistant Port Directors, Center Directors, Import and Entry Specialists, Brokers, Importers and other interested parties.

If there are any questions or concerns regarding this matter, please contact Craig T. Clark, Director, Textiles and Trade Agreements Division, at (202) 863-6657 or via email at fta@dhs.gov.

Cynthia F. Whittenburg

cc: Assistant Directors, Field Operations
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OFO-Trade Operations