Reconciliation Prototype may aid Customs, but is likely to give importers headaches

On Sept. 30, 1998, the current importer practice of filing informal periodic tenders on value issues is scheduled to end. In its place, pursuant to the Customs Modernization and Informed Compliance Act of 1993, the agency has developed a Reconciliation Prototype that will serve as the exclusive means of reconciling entries filed on or after Oct. 1, 1998, through Sept. 30, 2000.

Importers who normally file quarterly or annual tenders may need to determine the corrected sum of entries that are applicable to their individually tailored programs.

Importers will have the option of requesting Customs to withhold liquidation on all entries involved and making adjustments to them individually, or filing supplemental information letters and prior disclosures. But reconciliation is mandatory for importers making post-summary adjustments.

Agency seeks legal authority, financial controls

In implementing this program, Customs cited its primary objective is to modernize and improve Customs' review efforts.

Under the new system, only information not determinable at the time of entry may be provided to Customs at a later date by means of a reconciliation. In addition, the issues that will be reconcilable under the prototype are limited to all value issues; the value aspect involved with Heading 9802 of the Harmonized Tariff Schedule; port importation refund claims under the North American Free Trade Agreement; and limited classification issues. Such issues will only be eligible for reconciliation when they have been established as the subject of a pending administrative ruling, protest or court action.

A reconciliation of value, one under Heading 9802, and/or classification issues, must be filed within 15 months of the date of the oldest entry summary flagged for, and grouped on, that reconciliation. A reconciliation of a Nafa issue must be filed within 12 months of the date of the oldest entry summary flagged for, and grouped on, that reconciliation.

Nafa reconciliations may not be combined with other issues.

Formal application and continuous bond

A formal application must be completed, and a continuous bond, accompanied by a special rider, must be secured before participating in the prototype. Subsequently, the reconciliation process begins with the importer setting an underlying entry with an electronic indicator (which must be filed via the Automated Broker Interface, or ABI).

This will serve as the importer's notice of intent to file a reconciliation. By providing such notice, the importer is requesting that a certain issue or group of issues be separated from the entry summary. This issue or group of issues is then transferred to a reconciliation, and all issues other than those that are transferred proceed to the liquidation process.

Importers with numerous entries summaries that require flagging alternatively may provide their notice of intent by filing a "blanket application" in lieu of entry-by-entry flags, whereby all entries within a specified time period will be automatically flagged.

Before the expiration of the relevant time period (i.e., 15 months or 12 months, depending upon the issue), the importer electronically transmits the reconciliation. In the reconciliation, the importer must clearly document how the information in the reconciliation was derived and must provide all supporting documentation. The supporting documentation must include details at the entry level.

In the case of an absolute increase in duties, taxes and fees, a reconciliation may be filed using summarized data showing adjustments on an aggregate level. A list of the affected entries is required, but without illustrating the change in revenue on an individual entry basis.

Importers should note that if nothing (i.e., situations in which increase and decrease result at the end of the reconciliation period) is required to reach a net increase, this option does not apply.

Upon transmission of the reconciliation, the importer must provide Customs with an association file that relates all of the underlying entries to the reconciliation. The association file contains information regarding the underlying flagged entries and ports of entry on the reconciliation; the original amounts of duties, taxes and fees deposited (per underlying entry unless aggregate reconciliation is filed); and the reconciled amount that should have been paid for each of the underlying entries (unless aggregate filing).

Where applicable, interest must be calculated by, and broken out to, each underlying entry.

The reconciliation will be reviewed and liquidated, and one bill or refund will be issued if a revenue change is appropriate. These amounts will be calculated against the duties as shown in the association file upon liquidation of the reconciliation.

Importers may follow the normal protest procedures with regard to the liquidation of a reconciliation for manifesting a dispute. The reconciliation may be used as a vehicle to protest issues attendant to the underlying entries (i.e., those that were not transferred to the reconciliation).

Limitations on types of entries

Flagged entries with a common outstanding issue are to be grouped on one reconciliation. Adequate bond coverage for the reconciliation must also exist, and the participants must be capable of filing the underlying entry and reconciliation information electronically (via ABI).

The Reconciliation Prototype is limited to the following types of entries:

- Free and dutiable consumption entries.
- Quota/Visa consumption entries.
- Anti-dumping/countervailing duty (AD/CVD) consumption entries.
- Foreign-trade zone consumption entries.
- Quota/Visa and AD/CVD combination consumption entries. Quota and AD/CVD entries may only be reconciled for value, classification, Heading 9802, HTS, and/or Nafa issues.

The issues of AD/CVD final rate and scope determination, quota category or any admissibility issues are not eligible for reconciliation under this prototype.

Specific ports to be set up for reconciliation processing

Entries flagged for reconciliation may be filed at any port or combination of ports. However, Customs will promptly and unilaterally reconcile processing ports and will require the ABI transmission to reflect one of these Customs-identified processing ports.

With regard to drawback, Customs has mandated that all drawback claims on the underlying entries will be accepted until the reconciliation is filed with duties, taxes, and fees deposited. At that time, drawback may be claimed against the underlying entries, but may not be claimed against the reconciled increase for entries filed under an aggregate reconciliation.

Under this prototype, importers may only file entries for reconciliation when the information necessary to complete the entry is truly indeterminable. However, importers typically choose to file periodic tenders not because the relevant value information is indeterminable, but rather because, from an accounting standpoint, it is more convenient to do so.

Therefore, if Customs concludes that the importer could have provided the required information at the time of entry, and chose not to do so for its own convenience, such action could give rise to a penalty.

Importers advised to take care in filing each reconciliation

Furthermore, importers are required to file each reconciliation in a timely manner and to use reasonable care throughout the process. Thus, any delays or errors in filing by the importer could also give rise to penalties.

Finally, Customs has restricted the importer's ability to claim drawback on reconciled increases in duties paid.

In short, the Reconciliation Prototype, by establishing a procedure more complex than that associated with traditional block liquidations, creates additional opportunities for importer error and the resulting assessment of penalties.

While the program provides Customs with a means to achieve its objectives, it does so in a "procedurally" bureaucratic manner and at the expense of importer convenience.

Customs Update is a weekly column examining critical aspects of the relationship between customs agencies and importers. This column was prepared by Steven S. Weiser and Ari L. Kaplan, partners and associate, respectively, in the international law firm of Graham & James LLP, New York, and reflects the opinions of the writers. Please address any questions to Customs Update Trade Desk, The Journal of Commerce, Two World Trade Center, Suite 2750, New York, NY 10048.