
Los Angeles, California

PUBLIC BULLETIN



U.S. Customs and
Border Protection

Number: LA17-011

Date: FEB 28 2017

Subject: Post-importation Claims for Preferential Tariff Treatment

PURPOSE:

The purpose of this public bulletin is to provide guidance to the trade community concerning acceptable methods for submission of post-importation preference claims in light of a recent decision issued by the Court of International Trade.^[1] This public bulletin also serves to amend guidance in CSMS # 14-000460 that was issued to the trade community back on August 15, 2014.

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 under 19 USC §1514 and post-importation claims under 19 USC §1520(d).

On August 15, 2014, Customs and Border Protection (CBP) issued guidance specifying that when the implementing legislation for several preference programs specifically provides for post-importation claims, set forth in 19 USC §1520(d), such claims are the only appropriate mechanism to seek preference when not claimed at the time of entry.

Further, in the guidance CBP determined that if a preference program did not have a statutory post-importation mechanism, referenced in 19 USC §1520(d), importers were precluded from claiming post-importation duty preferences through protests under 19 USC §1514.^[2] Therefore, CBP instructed ports to reject as non-protestable any initial preference claims made under 19 USC §1514. Through the guidance below, CBP now amends the guidance given in CSMS # 14-000460.

^[1] *Zojirushi America Corp v. U.S.*, Slip Op. 16-78 (August 4, 2016).

^[2] CBP's decision was based on its interpretation of *Xerox Corp v. U.S.*, 423 F.3d 1356 (2005) and *Corpro Companies, Inc. v. U.S.*, 433 F.3d 1360 (2006). See Headquarters Ruling Letter (HRL) H193959, dated July 30, 2012.

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GUIDANCE:

General

Pursuant to the earlier-referenced decision by the Court of International Trade,^[3] for those preference programs that do not specifically provide for claims under the statutory post-importation mechanism of 19 USC §1520(d), CBP will permit use of the protest mechanism set forth in 19 USC §1514 to submit initial post-importation preference claims. CBP 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.

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

19 USC §1520(d)		19 USC §1514, 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
Korea FTA	Peru TPA	CBERA	Israel FTA	Products Agreement
		CBTPA	Uruguay Round Concession on Intermediate Chemicals for Dyes	Singapore FTA

19 USC §1514 Claims Rejected as Non-Protestable

In compliance with the now-amended CSMS # 14-000460, dated August 15, 2014, ports may have rejected as non-protestable (rather than denied) initial post-importation preference claims made under 19 USC §1514. Pursuant to the decision by the Court of International Trade in *Zojirushi America Corp. v. U.S.*, in order to assist CBP in processing protests previously rejected as non-protestable, importers are requested to resubmit their protests to the appropriate Center of Excellence and Expertise (CEE) Team within 180 days of the issuance of this guidance.


Guideline Updates

The Office of Trade will be revising all internal and external guidelines applicable to preference programs to permit filing of claims under 19 USC §1514. This public bulletin supersedes any conflicting guidance previously published, including, but not limited to, the now amended CSMS # 14-000460, dated August 15, 2014, implementing instructions for free trade agreements, the *FTA Guidelines*, and the *Side-by-Side*

^[3] See *Zojirushi America Corp v. U.S.*

Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs.

If there are any questions or concerns regarding this matter, please contact Program Manager Benjamin Whitney via email at BENJAMIN.L.WHITNEY@CBP.DHS.GOV.



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