therefore, special conditions are being issued without substantive changes for this airplane and made effective 30 days after issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beechcraft Model A36 airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definitions apply: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 13, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1485 Filed 1-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-241-AD; Amdt. 39-8158; AD 91-13-10 R1]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt and Whitney PW4000 Engines; and Boeing Model 767 Series Airplanes Equipped With Pratt and Whitney PW4000 or General Electric CF6-80C2-B2F and CF6-80C2-B6F Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Models 747 and 767 series airplanes, which currently requires the installation of new Engine Indicating and Crew Alerting System (EICAS) computers. The requirements of that AD are intended to prevent overspeed or uncommanded shutdown of an engine. This amendment adds additional airplane/engine configurations to the applicability of the rule. This action is prompted by a determination that these additional airplanes are subject to the same unsafe condition addressed in the existing AD.

DATES: Effective February 26, 1992.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register on August 21, 1991 [Amendment 39-7041, (56 FR 29174, June 26, 1991)].

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2687; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On June 5, 1991, the FAA issued AD 91-13-10, Amendment 39-7041 (56 FR 29174, June 26, 1991), which is applicable to Boeing Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines and Model 767 series airplanes equipped with Pratt and Whitney PW4000 or General Electric CF6-80C2-B6F Engines. That AD requires the installation of new Engine Indicating and Crew Alerting System (EICAS) computers on these airplanes to provide proper message function and allow removal of a limitation from the airplane flight manual (AFM). The requirements of that AD are intended to prevent overspeed or uncommanded shutdown of an engine.

After issuance of that AD, it came to the attention of the FAA that some Boeing Model 767 airplanes that are equipped with GE CF6-80C2-B2F series engines are also subject to the unsafe condition addressed by AD 91-13-10, but were not included in the applicability of that AD. A careful review of Boeing Service Bulletin 767-31-0038, dated April 12, 1990, which is referenced in the existing AD as the appropriate source for service information, indicated that all Model 767 airplanes equipped with either GE CF6-80C2-B2F or CF6-80C2-B6F series engines were identified in the effectivity of the service bulletin. However, this information is not clearly stated in the service bulletin; the service bulletin identifies the affected airplanes, but does not list their engine models. Therefore, the applicability of AD 91-13-10 must be revised by including the Model 767 airplanes equipped with GE CF6-80C2-B2F series engine, since these airplanes are also subject to the addressed unsafe condition.

The FAA has determined that all Model 767 airplanes equipped with General Electric CF6-80C2-B2F engines are operated currently by foreign operators under foreign registry and, therefore, are not directly affected by this AD action. Nevertheless, this AD action is necessary to advise the cognizant foreign authorities that the subject unsafe condition may exist on these airplanes. Should one of the affected airplanes be placed on the U.S. Register in the future, it will require approximately 3 work hours to accomplish the replacement procedures, at an average labor charge of $55 per work hour. Based on these figures, the cost impact of this AD would be $165 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39-7041, to read as follows:

91-13-10 R1 **Boeing:** Amendment 39-8158. Docket No. 91-NM-241-AD. Revises AD 91-13-10, Amendment 39-7041.

Applicability: Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines; and Model 767 series airplanes equipped with Pratt and Whitney PW4000, General Electric CF6-80C2-B2F, or General Electric CF6-80C2-B6F series engines; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent overspeed or uncommanded shutdown of an engine, accomplish the following:

(a) For Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines, and Model 767 series airplanes equipped with Pratt and Whitney PW4000 or General Electric CF6-80C2-B6F engines: Within 3 days after May 22, 1989 (the effective date of Amendment 39-6210), add the following to the Limitations Section of FAA-approved Airplane Flight manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"Prior to each departure, with all engines running, refer to the EICAS status page and determine the dispatch capability of the aircraft."

(b) Within the next 24 months after August 12, 1991 (the effective date of Amendment 39-7041), replace the EICAS computers in accordance with the appropriate service bulletin listed below. After replacement of the EICAS computers in accordance with the specified service bulletins, the AFM limitation required by paragraph (a) of this AD may be removed.

(1) For Model 747 series airplanes listed in Boeing Service Bulletin 747-31-2151, dated March 29, 1990.

(2) For Model 767 series airplanes equipped with Pratt and Whitney PW4000 engines listed in Boeing Service Bulletin 767-31-0033, Revision 1, dated September 27, 1990.

(3) For Model 767 series airplanes equipped with General Electric CF6-80C2-B6F engines listed in Boeing Service Bulletin 767-31-0038, dated April 12, 1990.

(c) For Model 767 series airplanes equipped with General Electric CF6-80C2-B2F engines:

(1) Within the next 3 days after the effective date of this AD, add the following to the Limitations Section of FAA-approved Airplane Flight manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"Prior to each departure, with all engines running, refer to the EICAS status page and determine the dispatch capability of the aircraft."

(2) Within the next 24 months after the effective date of this AD, replace the EICAS computers in accordance with Boeing Service Bulletin 767-31-0038, dated April 12, 1990. After incorporation of the EICAS computers, the AFM limitation required by paragraph (c)(1) may be removed.

(d) For airplanes not subject to paragraph (b) or (c) of this AD, within the next 30 days after the effective date of this AD, remove the AFM limitation required by paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(g) The replacement requirements shall be done in accordance with the following Boeing Service Bulletins, which incorporate the following list of affected pages:

Service bulletin	Revision level	Date	Pages
747-31-2151	Original	March 29, 1990.	1-10
767-31-0033	1	September 27, 1990.	1, 2, 4, 5
	Original	May 31, 1990.	3, 6, 7, 8, 9, 10
767-31-0038	Original	April 12, 1990.	1-8

This incorporation by reference was previously approved by the Director of the Federal Register at 56 FR 29174 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39-8158), AD 91-13-10 R1, becomes effective February 26, 1992.

Issued in Renton, Washington, on January 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1486 Filed 1-21-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 148 and 178

[T.D. 92-8]

RIN 1515-AA75

Customs Regulations Amendments Relating to the United States-Canada Free-Trade Agreement

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules implementing the duty preference provisions of the United States-Canada Free-Trade Agreement, also referred to as the CFTA. The document addresses the public comments submitted in response to the interim regulations by which the CFTA was initially implemented, and it makes certain changes to those interim regulatory texts in response to the public comments and in order to set forth administrative decisions under the CFTA that are currently in effect.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Judy Schoeny, Office of Trade Operations (202) 566-7060); Audit and Forms Aspects: Marcus Sircus, Office of Regulatory Audit (202-566-2812); Legal Aspects: John Valentine, Office of Regulations and Rulings (202-566-8530).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada entered into an agreement, the United States-Canada Free-Trade Agreement (CFTA). The objectives of the CFTA are to eliminate Customs duties and other barriers to trade in goods and services between the two countries, facilitate conditions of fair competition within the free-trade area, liberalize significantly conditions for investments within the free-trade area, establish effective procedures for the joint administration of the CFTA and the resolution of disputes, and lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the CFTA. The provisions for the CFTA were adopted by the United States with the enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the "Act"), Public Law 100-449, 102 Stat. 1851

The function of the U.S. Customs Service is to implement those portions of the CFTA and the Act that relate to certain trade issues, in particular the rules of origin and related provisions, which form the basis for determining whether goods imported into the U.S. from Canada are eligible for the preferential duty treatment accorded to goods originating in Canada, and which are also set forth in General Note 3(c)(vii), Harmonized Tariff Schedule of the United States (HTSUS). To this end, Customs published interim Customs Regulations as T.D. 89-3 in the **Federal Register** on December 23, 1988 (53 FR 51762). The interim regulations provided for a 60-day public comment period which was subsequently extended, by a notice published in the **Federal Register** on March 13, 1989 (54 FR 10322), to March 23, 1989.

A total of thirteen parties submitted comments regarding one or more aspects of the interim regulations. The comments received, and the Customs responses thereto, are set forth below.

Discussion of Comments

A. Automotive Products—§ 10.84

Comment: One commenter suggested that § 10.84 be amended to provide that the certifications under paragraphs (b)(1)-(3) may appear on the commercial invoice or be attached thereto, as is allowed under current APTA procedures.

Customs response: The interim regulations did not in any way affect the previously accepted methods for providing the certification required by § 10.84. Moreover, under paragraph (a)(1) a Customs officer has the discretion to not require the certificate based on the circumstances of the particular importation. Accordingly, Customs does not believe that the proposed amendment is necessary.

Following publication of the interim regulations, Customs noticed an error in the next to last sentence of § 10.84(a)(1), where reference is made to a certificate executed by the "importer". It is clear that reference should be to the (Canadian) "exporter" because only a Canadian party would normally have knowledge of the facts set forth in the certificate regarding the Canadian origin of the imported goods. This document corrects this error.

B. Originating Goods—§ 10.303

Comment: One commenter suggests that the regulations should allow a maximum amount of permissible non-qualifying content (de minimis test), *e.g.*, 10 percent of the export value, before resort to the value content requirement is deemed necessary, because (1) it is not always possible to obtain 100 percent accurate (often, second hand) information from suppliers, (2) the exporter runs an unfair risk in being required to be 100 percent accurate, and (3) otherwise, even a minute amount of untransformed material would expose the whole product to the value test.

This same commenter also suggests that the regulations should be amended to clearly state that, for the purposes of the value test, the determination of what is originating or non-originating material is to be made on the basis of the condition of the exported product (*i.e.*, if a product has been transformed in accordance with the tariff shift test, then 100 percent of the value should be attributed to the value of materials originating in either country). This commenter argues that to require otherwise would contradict the CFTA because it would require disregarding the further processing performed by the exporter.

Customs responses: The rules of origin set forth in the CFTA do not provide for a de minimis test on third country content.

With regard to the second point, it should first be emphasized that the condition of the exported product is, indeed, the basis for determining whether an applicable value-added requirement is met. This being said, it appears that this commenter is misreading the CFTA rules of origin which in certain circumstances require that a distinction be made between the origin of the exported article and the origin of the constituent materials contained in that exported article: In cases where the rules of origin require application of a value-added test, the value of materials contained in the article may be counted only if the materials are considered to have already had their origin in either CFTA country at the time that they were incorporated into the article. In other words, an exported article would be considered to consist of 100 percent originating materials only if all of its constituent materials were wholly (*i.e.*, entirely, including in all prior forms or conditions) produced in a CFTA country and/or transformed so as to obtain origin in a CFTA country prior to their incorporation into the article. Conversely, an exported article would be considered to contain no originating material if the article resulted directly from the transformation of a material which had retained its non-CFTA country origin up until that transformation in the CFTA country. Moreover, even in a case where the exported article contains no originating materials, the further processing performed by the manufacturer is not simply disregarded, because the direct cost of that processing is independently countable toward the value-added requirement.

In the process of reviewing § 10.303, Customs noticed that the HTSUS General Note citation in paragraph (d) refers to subdivision "(Q)", whereas the proper reference should be to subdivision "(R)", and that the word "to" is missing before the citation. This document corrects these errors.

C. Circumvention—§ 10.304(b)

Comment: One commenter alleges that even though this provision follows the CFTA text, it will result in subjective and uneven application of the CFTA. Accordingly, this commenter recommends that the regulations be amended to indicate that operations performed solely in order to gain the preference (so-called "tariff engineering") are permissible. This commenter further suggests that examples of circumvention, as distinguished from qualifying operations performed in Canada, should be inserted in the regulation.

Customs response: Customs does not believe that this provision will lead to subjective and uneven application of the CFTA, because CFTA eligibility will be determined solely on the basis of compliance with the rules of origin and those rules are separate and distinct from the CFTA "circumvention" provision. The fact that "tariff engineering" by itself would not constitute "circumvention" is made clear in the Statement of Administrative Action, which accompanied the Act, wherein the following is stated: "The well-established right to configure merchandise in such a way that it is within the scope of one tariff provision that is more advantageous than another will not be infringed in any respect. The exercise of this right by itself will not be presumed to be circumvention." Customs does not believe that it is necessary to amend the regulations to state this basic principle which is implicit by virtue of the very existence of the CFTA program and the rules of origin incorporated therein. Moreover, because a case-by-case approach is necessary in applying the CFTA provisions, it is not possible to lay down general rules as regards what is or is not "circumvention". If doubt arises as to whether a particular operation would be allowable, the concerned private party may submit a request for a prospective ruling on the CFTA eligibility of the goods in question under Part 177 of the Customs Regulations.

D. Value Content Requirement—§ 10.305

Comment: One commenter states that the regulations should be amended to clarify the difference between includable brokerage charges §§ 10.305(b)(2)(ii) and (c)(1)(ii)) and excludable brokerage charges (§ 10.305(e)(2)).This commenter, referring as an example to a case where a Canadian broker is paid for purchasing a product from abroad by telephone for the manufacturer, asks whether this is paid in Canada, or whether it relates to the importation, or both, and if both, whether it is part of the value of materials and not part of the direct costs of processing.

Customs response: This comment refers to two separate situations. Paragraphs (b)(2)(ii) and (c)(1)(ii) address those costs which are includable in determining the value of originating materials or the value of goods when exported (and for which CFTA status is claimed); paragraph (e)(2), on the other hand, refers to those costs which are not considered "direct" costs of processing operations. Although a brokerage charge may be includable for purposes of determining the value of either constituent materials or exported goods, it may not be included as a direct cost of processing. Customs believes that the regulations are sufficiently clear on this point and that no change is required.

Comment: Two commenters recommend amending § 10.305(b)(2)(iv) by adding at the end a reference to "assists", because the reference to subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the GATT is not sufficiently explanatory. One of these commenters further suggests the inclusion therein of citations to the Customs Regulations provisions which discuss assists.

Customs response: Customs does not agree that the proposed amendments should be made. The regulatory reference follows the terms of the CFTA and of General Note 3(c)(vii)(N)(1)(IV), HTSUS, where use of the international GATT reference was deemed appropriate in consideration of the bilateral (hence, international) nature of the CFTA. Thus, a reference to "assists", which is not used in the international valuation code, would not be appropriate in this regulatory context.

E. Retroactive Claims/Reliquidation—§§ 10.307(b) and (c)

Comment: Six commenters state that § 10.307 is too restrictive in requiring that a claim for CFTA treatment be filed when the entry summary is filed (§ 10.307(b)) and that the Exporter's Certificate of Origin (Customs Form 353) be available when that claim is filed (§ 10.307(c)). They argue that these provisions bar retroactive claims for CFTA treatment, that better accuracy of claims will result if claims are allowed after filing the entry summary when all the facts are known, and that, as in the case of the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI), claims should be allowed, and Customs Form 353 made available, at any time prior to final liquidation. These commenters propose one or more of the following regulatory amendments to address these problems:

—Deletion of the restriction in § 10.307(b).
—Amendment of § 10.307 to reflect the language in §§ 10.172, 10.173(a), 10.198(a) and 10.112 of the Customs Regulations and to specifically allow action under 19 U.S.C. 1514 and 1520(c)(1). One commenter specifically suggests amending § 10.307(c) by inserting the following in the last sentence after "section": "or at the time of the filing of a request for remedial action under Parts 173 or 174 of this Chapter".
—Amendment of § 10.112 to explicitly allow for later availability of the Customs Form 353.

Customs response: The requirement in the second sentence of § 10.307(c) that the Exporter's Certificate of Origin "must be available" (*i.e.*, must be in existence) at the time the preference is claimed is merely a consequence of the requirement in the first sentence that a claim "shall be based" on the Exporter's Certificate of Origin. This first sentence requirement reflects the terms of Annex 406 of the CFTA which provides, among other things, that any importer making a declaration that goods meet the CFTA rules of origin must "base such declaration on the exporter's written certification to the same effect".

However, Customs does agree that § 10.307 may be overly restrictive in appearing to provide that a claim for CFTA treatment can be made only at the time of the filing of the entry summary by placing thereon the symbol "CA" before the HTSUS subheading covering the goods in question. There was never any intent on the part of Customs to deny to importers the opportunity afforded under other provisions of law to make a claim for a CFTA duty preference after the filing of the entry summary or equivalent documentation, either before or after liquidation of the entry. Thus, an importer may file a claim for a CFTA preference after filing the entry summary or its equivalent (1) at any time prior to liquidation, by requesting correction of the entry and submitting a valid Exporter's Certificate of Origin with a corrected entry, (2) within 90 days after liquidation, by filing a protest under 19 U.S.C. 1514, or (3) at any time within one year of the date of liquidation, by submission of a letter to Customs under 19 U.S.C. 1520(c)(1) requesting reliquidation of the entry provided the request is based on a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law. It should be noted, however, that a valid Exporter's Certificate of Origin covering the goods in question also must be in existence at the time that such a post-entry/entry summary claim is made.

Customs does not believe that it would be appropriate to amend § 10.307 to reflect the language of §§ 10.112, 10.172, 10.173(a), and 10.198(a) because those provisions generally concern the submission of documents which are a condition of entry (such as the GSP/CBI Certificate of Origin Form A), whereas the CFTA Exporter's Certificate of Origin is not required as part of the entry/entry summary (it is submitted to Customs only after entry and only if specifically requested). Nor does it seem necessary or appropriate to refer specifically to the right to file an amended entry or seek remedial action under 19 U.S.C. 1514 or 1520(c)(1) because these are actions of general applicability and thus are not normally cited in a context as specific as the CFTA, and it is noted in this regard that no problems appear to have arisen from the longstanding absence of such references in the GSP and CBI regulations. Rather, it would appear preferable to simply remove the overly restrictive language from § 10.307 so as to better reflect the law and current Customs policy. Accordingly, § 10.307 has been amended (1) in paragraph (a), by replacing the words "is claimed" by the words "may be claimed", (2) in paragraph (b), by deleting the first sentence and by redrafting the retained second sentence of refer to a timely claim "for a preference under the Agreement", and (3) in paragraph (c), by deleting the words "under paragraph (a) of this section" which appear twice and by simply referring to a claim for a preference "under the Agreement".

F. General Use of Customs Form 353

Comment: One commenter argues that Customs Form 353 should not be used at all, because in its present form it is not required by the CFTA, is too long and complicated, and does not serve to enforce the basic thrust of the CFTA which is country of origin of the imported goods. Instead, this commenter suggests allowing a simple written statement that the goods qualify under the CFTA, which could be put on existing Customs documents.

Customs response: Customs does not agree. The format of the Exporter's Certificate of Origin was developed during bilateral discussions between the United States and Canada. Moreover, this commenter appears to misunderstand the main thrust of the CFTA, which is reduced or duty-free treatment for goods that meet specific rules of origin (which involve more than merely "country" of origin); the elements on Customs Form 353 are included primarily with those rules of origin in mind and are necessary to establish CFTA eligibility. A simple written statement that the goods qualify under the CFTA, placed on existing Customs documents, would be totally inadequate for verifying CFTA eligibility.

Comment: One commenter suggests that the regulations be amended to allow bonding for production of Customs Form 353, as is done in the case of the GSP and CBI.

Customs response: Inasmuch as the CFTA specifically requires that a claim for duty preference be based on an existing written certification by the exporter, and in view of the fact that the Exporter's Certificate of Origin does not form part of the entry package (rather, it is only submitted after entry and only if requested by Customs), it is not a bondable form. As regards the practice under the GSP and CBI, this commenter fails to note the distinction between the Certificate of Origin Form A (which is normally part of the entry package) and the GSP and CBI Declaration which, like the CFTA form, is submitted only upon request for post-entry verification and thus has never been a bondable form. Moreover, Customs has taken a policy decision, reflected in Directive 3550–27 dated September 8, 1987, to reduce paperwork by requiring neither a bond for production of a missing document (such as a GSP or CBI Form A) nor actual submission of the missing document unless Customs specifically requests it in writing. Accordingly, Customs does not accede to this commenter's suggestion.

Comment: One commenter recommends that § 10.307(c) be amended to permit completion and signature of Customs Form 353 by the person who has knowledge of the origin content of the goods (*i.e.*, the actual supplier or manufacturer), because the exporter is often a consolidator or packager who does not have the necessary information and thus should not bear the responsibility and liability for this. This commenter suggests that this could be done by defining "exporter" to include the actual supplier or manufacturer, with the result that the consolidator/exporter who is not the actual supplier would only be responsible for passing on the Customs Form 353 which accompanied the goods to their consolidation location.

Customs Response: The CFTA specifically requires that the certification be made by the "exporter". In a case in which the exporter is only a consolidator or packager, it nevertheless remains the responsibility of that exporter to obtain from the supplier or manufacturer the information needed to make the required certification.

Comment: One commenter suggests that brokers should be permitted in the regulations to correct clerical and more substantial errors appearing on Customs Form 353, with the approval of the exporter. This commenter further argues that brokers should not be required to possess or retain Customs Form 353 at any time, because it is the responsibility and liability of the consignee/buyer to do so.

Customs response: As regards the correction of clerical or other errors on Customs Form 353, a broker with a valid power of attorney from the exporter is empowered to act in that principal's name and thus would have the authority to correct such errors. With regard to the possession or retention of Customs Form 353, it should be noted that brokers acting as importer of record or as an agent on behalf of the importer of record are required to maintain records pertaining to the transaction, under 19 U.S.C. 1508 and under 19 U.S.C. 1641 and the regulations issued thereunder (19 CFR part 111). Accordingly, Customs does not believe that any changes to the regulations are necessary or appropriate in regard to these points.

Comment: One commenter recommends that Customs Form 353 be amended throughout to include citations to the HTSUS General Note provisions dealing with the CFTA.

Customs Response: Customs believes that inclusion of citations to the various HTSUS General Note 3(c) provisions dealing with the CFTA would unduly complicate Customs Form 353, thus rendering it more difficult to use. Moreover, inclusion of such citations would require amending the Form if at any future time the numbering scheme within General Note 3(c) were changed. In addition, because Customs Form 353 is a dual-use form acceptable in both Canada and the United States under the CFTA, inclusion of only citations to United States legal provisions would appear to be inappropriate. Customs believes that the present approach, whereby a general cross-reference to HTSUS General Note 3(c) is set forth in § 10.301, is preferable.

G. Specific Elements of Customs Form 353

1. Field 2—Blanket Certification

Comment: In order to align with the Canadian practice and reduce paperwork, two commenters recommend that the 6-month period for blanket certifications be extended to 12 months. Another commenter suggests that the regulations be amended to specifically provide for blanket certifications, including the length of time for which they will be valid.

Customs response: When the CFTA went into effect Customs determined that for import purposes it would be preferable to provide for blanket certifications for a maximum period of only 6 months, until such time as it could be determined that a longer period (*i.e.*, 12 months) would be workable. Customs subsequently reviewed the issue and concluded that it would be in the best interests of the public and the Government to allow a 12-month blanket certification period. Accordingly, on May 2, 1990, Customs Headquarters advised field offices by telex (and the trade community through those field offices) that blanket exporter's certificates completed on or after June 1, 1990, could have a maximum valid period of 12 months.

Customs agrees that the regulations should refer to blanket certifications and to the maximum 12-month period, and it is noted in this regard that, as further discussed below, such a change will also provide an opportunity to clarify an administrative position which Customs has taken with regard to the use of blanket certifications.

2. Field 3—Consignee Identification

Comment: Two commenters recommend complete elimination of Field 3 on the grounds that (1) it is burdensome for exporters who ship identical merchandise to many consignees, (2) the name of the consignee is irrelevant to the issue of whether the goods qualify for CFTA treatment and (3) the identity of the consignee appears elsewhere in the entry package.

Customs response: Field 3 should be retained because its inclusion on the Form resulted from bilateral discussions between the U.S. and Canada, and its elimination should similarly be made only by bilateral agreement. Nevertheless, Customs has recognized that completion of Field 3 may create an unnecessary burden when the same information is on the entry documents. Accordingly, on October 1, 1990, Customs Headquarters advised field offices by telex (and the trade community through those field offices) that henceforth (1) an exporter will be allowed to leave Field 3 blank unless it is the exporter's intention to restrict the applicability of the Form to one or more buyers, or (2) alternatively, exporters will be allowed to issue blanket certificates showing "Various" in Field 3. In connection with the next revision of Customs Form 353, consideration will be given to whether the instructions on the reverse side should be amended to reflect this position.

Comment: Three commenters raise issues regarding the identity of the party to be included in Field 3. One commenter simply recommends that the regulations define "consignee" so that it is clear what party should be identified in the field. Another commenter suggests that, to avoid the need for obtaining a new Customs Form 353 when a blanket certification is out of date because there are new ultimate customers to whom the goods will be delivered, only the identity of the intended user (*i.e.*, the importer of record) should be required in Field 3. The third commenter states that the regulations should allow the identification in Field 3 to include the consignee, purchaser or importer.

Customs response: Shortly after the CFTA went into effect, Customs Headquarters issued a telex to field offices (with instructions that copies be provided to the trade community) stating that the party to be identified in Field 3 could be the consignee, the purchaser, or the importer of record, and this remains the Customs position. The flexibility provided by this position could, among other things, solve the problem of having to obtain a new Customs Form 353 where a blanket certification is no longer valid due to the acquisition of new ultimate customers. As in the case of the blanket certification period, Customs is of the opinion that any further clarification as to the party or parties to be identified in Field 3, if deemed necessary, should not be done through a regulatory amendment but rather should be reflected in the instructions set forth on the reverse side of Customs Form 353. Accordingly, Customs will consider including this change in connection with the next revision of Customs Form 353.

3. Field 4—Producer Identification

Comment: Three commenters suggest elimination of Field 4 because (1) it goes beyond the intent of the Customs Form 353 which is to show the relationship between the exporter and the importer, (2) identification of the manufacturer(s) poses a substantial administrative burden in cases involving multiple line items and manufacturers in one shipment and (3) confidentiality of business information would be lost if the exporter is compelled to reveal the names of its suppliers to its export customers, and this could potentially lead to a loss of future sales to those customers who would be able to source the goods directly from the suppliers. On the issue of confidentiality, one of these commenters suggests, in the alternative, that some way be found to maintain confidentiality, *e.g.*, by merely requiring that the exporter maintain on file the certificates of origin from its suppliers.

Customs response: Customs does not agree that Field 4 goes beyond the intent of Customs Form 353, because the true purpose of the form is to demonstrate that the imported goods originate in Canada under the CFTA rules, and information regarding the producer is often a crucial factor in verifying the origin of the goods. As regards the alleged substantial administrative burden resulting from this requirement, Customs would point out that a decision whether to enter into a CFTA transaction is essentially a business decision requiring a balancing of anticipated rewards against possible drawbacks or risks. Accordingly, Field 4 must be retained.

On the issue of confidentiality, Customs has recognized that completion of Field 4 could result in the disclosure of sensitive information regarding the exporter's sources of supply. In order to address this problem, Customs Headquarters on October 1, 1990, advised field offices (and the trade community through those field offices) that henceforth Field 4 may be completed with the statement "Available to U.S. Customs Upon Request". Customs will consider whether a corresponding amendment to the instructions applicable to Field 4 should be made during the next revision of Customs Form 353.

4. Fields 5 and 7—Origin Criteria

Comment: One commenter states that these two fields are unnecessary and thus should be eliminated because they do not serve to establish eligibility. In other words, if Customs questions the claimed eligibility, other evidence would still have to be presented to Customs to support the claim.

Customs response: Customs does not agree that these two fields should be eliminated. Where a claim for CFTA treatment is filed, there is a presumption that the exporter has performed a review of the goods to determine that they comply with the CFTA origin criteria. The Exporter's Certificate of Origin, and in particular the information in Fields 5 and 7, serves to support that presumption. In many cases the information provided on the certificate, coupled with the Customs officer's knowledge of the particular product line, will obviate the need to ask for additional evidence to support the claim. On the other hand, in the absence of the information contained in Fields 5 and 7, other evidence to support the claim would have to be submitted in every case.

Comment: One commenter points out that an additional criterion is necessary in Field 5, namely, a category for goods which comprise only goods which are wholly produced or obtained in Canada or the United States and/or goods which otherwise qualify as materials originating in Canada or the United States.

Customs response: The CFTA texts do not specifically address a product which is not "wholly" produced or obtained in the United States or Canada but which consists entirely of materials that have United States or Canadian origin under the CFTA origin rules. Consultations between the United States and Canada to resolve this problem are ongoing.

5. Field 8—Description of Goods

Comment: Two commenters argue that Field 8 is unnecessary because the information requested is already available on invoices and other documents in the entry package.

Customs response: Customs does not agree. A description of the goods is necessary to establish a connection between the goods covered by the CFTA claim and those goods as described on the invoices and other documents in the entry package. This is particularly true in cases where the shipment in question covers both goods covered by a CFTA claim and goods for which no CFTA claim is made. Finally, given the fact that the Exporter's Certificate of Origin is only supplied to Customs after entry has taken place, it would be extremely difficult, if not impossible, to connect a certificate to the correct entry package without a description of the goods covered by the certificate.

Comment: Two commenters object to the onerous administrative burden imposed by the requirement that the precise or estimated number of third country constituent materials per unit be indicated in Field 8 if a change in tariff classification criterion is used and there are multiple constituent materials.

Customs response: In connection with the administrative review and approval of the use of Customs Form 353, the instructions regarding third country materials were eliminated from the reverse side of the form. Accordingly, there is no longer any requirement that third country materials be separately listed in Field 8.

6. Field 11—Certification

Comment: Two commenters argue that the certification language should be amended to include the words "to the best of my knowledge and belief" in order to avoid the strict warranty that presently appears, because often the person signing the Customs Form 353 is under severe time constraints and does not have direct knowledge as to all facts when the certificate must be completed.

Customs response: The CFTA requires that the exporter certify that the goods in fact meet the CFTA rules of origin, not that they appear to do so based on the exporter's knowledge (however incomplete that knowledge may be) and belief (however misplaced that belief may be). To amend the certification language as proposed would be contrary to the express terms of the CFTA and would in effect totally nullify the legal force of the certification procedure and the CFTA rules or origin upon which the duty preference is based. In response to the alleged lack of direct knowledge problem, Customs points out that use of the CFTA duty preference is not an absolute right but rather is conditional on the establishment of certain facts, and the exporter must establish those facts in advance of the claim for CFTA treatment. As regards time constraint problems, the exporter can always wait until those time constraints have disappeared and, as discussed above, so long as liquidation has not become final the U.S. importer can always delay making the claim until a proper Exporter's Certificate of Origin is in hand.

Comment: One commenter states that the certification language imposes an impossible burden on retailers that source goods from hundreds of vendors for resale, because there is often a lack of first-hand knowledge of the true facts regarding the production of the goods and because such retailers cannot maintain the required records where supply and manufacturing operations are constantly changing.

Customs response: The response to the preceding comment is also relevant here. The retailer simply must obtain from its supplier the information necessary to complete the Exporter's Certificate of Origin, and the retailer must obtain updated information if sources or manufacturing operations change. Customs recognizes that meeting the CFTA requirements may be more difficult for some parties than for others (given the variables that apply from one business operation to another).

H. Records Retention—§ 10.308

Comment: One commenter suggests that this provision be amended to allow a broker to retain the records in place of the importer of record, because the broker interfaces directly with Customs.

Customs response: Under 19 U.S.C. 1508 and 19 CFR 162.1b and 162.1c, an importer must retain records pertaining to his import transactions for a period of 5 years from the date of entry of the merchandise. It would be clearly contrary to this legal requirement for Customs to provide in the CFTA regulations for retention of the Exporter's Certificate of Origin by a broker as a replacement for retention by the importer of record. A broker acting as an agent of the importer is separately required to maintain records pertaining to that importer's transactions, both under 19 U.S.C. 1508 and the regulations thereunder and under 19 U.S.C. 1641 and 19 CFR 111.21–111.23.

Additional Changes to the Regulations

Since the CFTA went into effect, Customs has had occasion to address a number of important CFTA issues in connection with the issuance of binding rulings and other administrative decisons. These rulings and decisions, which clarify and interpret the CFTA and the regulations thereunder, reflect official positions of Customs and thus are currently being applied by Customs. In order to provide the trade community with the greatest possible guidance and predictability as regards application of the CFTA provisions, Customs believes that the principles reflected in those rulings and decisions should be incorporated in the regulations. Accordingly, this final rule document sets forth additional regulatory changes to incorporate those rulings and decisions as well as certain editorial or organizational changes to add clarity and improve the readability of the regulations. The sections of the interim regulations affected by these changes are indicated below.

Section 10.303

This section, which has been reorganized, includes a new paragraph (b) which clarifies the meaning of "originating materials"; the definition of "materials" reflects the definition in article 304 of the CFTA and the definition of "originating" is based on the definition in article 201 of the CFTA. In addition, a new paragraph (c) has been added to clarify that under the CFTA a "change in classification" has reference to a change within the international Harmonized System. Finally, a reference to the HTSUS provision covering the CFTA has been added to the paragraph concerning goods wholly obtained or produced, in order to align on the approach used in the following paragraph.

Section 10.305

This section, which has been reorganized, includes a new paragraph (a)(3) which interprets the CFTA provisions regarding direct cost of processing or assembling. In addition, a new paragraph (b)(3) has been added to set forth interpretations of the CFTA provisions regarding the value of originating materials.

Section 10.307

A new paragraph (d)(2) has been added to clarify the manner in which blanket certifications may be used.

Section 10.310

The first sentence in paragraph (b) has been amended to clarify that the election to average is binding for the entire period covered by the election.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that, with the exception of the interim amendment to § 24.23 which was the subject of a separate rulemaking procedure implementing the Customs user fee provisions contained in § 111 of the Customs and Trade Act of 1990 (Public Law 101–382) (see T.D 91–95 published December 5, 1991, 56 FR 63648), the interim regulations published as T.D. 89–3 should be adopted as a final rule with certain changes thereto as discussed above and set forth below In addition, part 178, Customs Regulations (19 CFR part 178), is being amended to indicate the OMB-assigned control number for the information collections contained in this final rule

Inapplicability of Public Notice and Delayed Effective Date Provisions

Because the amendments contained in this document reflect existing statutory requirements or relieve a restriction or merely implement interpretations and policies that are already in effect under interim regulations, good cause exists under 5 U.S.C. 553(b) (A) and (d) for dispensing with public notice and delayed effective date procedures.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in this final regulation, contained in §§ 10.84, 10.307, 10.310 and 10.311, have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(h)) under control number 1515–0164. The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 225 hours, depending on individual circumstances, with an estimated average of 3.55 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspections, Imports, Motor Vehicles.

19 CFR Part 148

Customs duties and inspections, Imports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Accordingly, that portion of the interim rule amending parts 10 and 148, Customs Regulations (19 CFR parts 10 and 148), which was published at 53 FR 51762–51777 on December 23, 1988, is adopted as a final rule with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

§ 10.84 [Amended]

2. In § 10.84(a)(1), fifth sentence, remove the word "importer" and add, in its place, the word "exporter".

3. Section 10.303 is revised to read as follows:

§ 10.303 Originating goods.

(a) *General.* For purposes of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(1) *Wholly of Canadian or United States origin.* The goods are wholly obtained or produced in the Territory of Canada or the United States, or both, as set forth in General Note 3(c), HTSUS;

(2) *Transformed with a change in classification.* The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS; or

(3) *Transformed without a change in classification.* An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS, or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(i) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of the goods when exported to the United States;

(ii) The assembled goods are not subsequently processed or further assembled in a third country; and

(iii) The goods satisfy the requirement in § 10.306.

(b) *Originating materials.* For purposes of this section and § 10.305, the term "materials" means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods, and the term "orginating" when used with reference to such materials means that the materials satisfy one of the criteria for originating goods set forth in paragraph (a) of this section.

(c) *Change in classification.* For purposes of paragraph (a) of this section, the expression "change in classification" means a change of classification within the Harmonized Commodity Description and Coding System (Harmonized System) as published and amended from time to time by the Customs Cooperation Council.

(d) *Articles of feather.* The goods are eligible to be treated as originating in Canada pursuant to General Note 3(c)(vii)(R)(12)(ee), HTSUS.

4. Section 10.305 is revised to read as follows:

§ 10.305 Value content requirement.

(a) *Direct cost of processing or assembling.*

(1) *Definition.* For purposes of applying a specific rule of origin under the Agreement which requires a value content determination, the terms "direct cost of processing" and "direct cost of assembling" mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(i) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees of independent contractors;

(ii) The cost of inspection and testing the goods;

(iii) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(iv) Development, design, and engineering costs;

(v) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(vi) Royalty, licensing, or other like payments for the right to the goods.

(2) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(i) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) Brokerage charges relating to the importation and exportation of goods;

(iii) Costs for telephone, mail, and other means of communication;

(iv) Packing costs for exporting the goods;

(v) Royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(vii) Profit on the goods.

(3) *Interpretation.* (1) *Indirect materials.* Under the definition of "materials" set forth in § 10.303(b), certain types of materials are treated as direct costs of processing or assembling under paragraph (a) of this section. This applies principally to materials used or consumed indirectly in the production of exported goods, where no portion of those materials is physically incorporated in the exported goods. In addition to the items specified in paragraph (a)(1)(iii) of this section, such materials include items such as gloves and safety glasses worn by production workers, tape used in painting processes, and tools, materials and spare parts used in the repair and maintenance of machinery and equipment used in the production of the exported goods. Such materials are to be distinguished from waste and spoilage specified in paragraph (b)(1)(ii)(C) of this section, which relate to materials that are physically incorporated in the exported goods.

(ii) *Directly incurred.* In order for costs incurred by a production facility to be treated as direct costs of processing or assembling, those costs must be directly incurred in the production of the exported goods and not merely associated with the production facility as peripheral costs necessary to operate the facility. In addition to the exclusions set forth in paragraph (a)(2) of this section, such peripheral costs include labor costs for nurses tending to employees, for accounting personnel involved in physical inventory taking, for personnel responsible for purchasing or requisitioning materials to be used or consumed in the production process, and for second level supervisors and above who are not directly involved in the production process.

(iii) *Labor costs.* Under paragraph (a)(1)(i) of this section, labor costs includable as direct costs of processing or assembling are limited to labor provided by the producer's employees or by independent contractors. Thus, for example, where processing operations are performed on components in the United States and those components are sold to a manufacturer in Canada where they are incorporated in goods exported to the United States, the cost of those processing operations in the United States cannot be separately counted as a direct cost of processing attributable to the finished goods exported to the United States.

(iv) *Interest expense.* Under paragraphs (a)(1)(v) and (a)(2)(vi) of this section, mortgage interest, secured by real property, will be treated as a direct cost of processing or assembling, but only for that portion of the interest which is related to real property directly used in the production of the exported goods; thus, where the entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest which is attributable to the production area is counted toward the value-content requirement. Interest expenses not covered by a mortgage (including interest on funds borrowed to meet the payroll of personnel who are directly involved in the production process, interest on inter-company loans and interest on lines of credit) are general and administrative costs or expenses and thus are not considered direct costs of processing or assembling.

(b) *Value of originating materials.* (1) *Definition.* The term "value of materials originating in the United States or Canada or both" means the aggregate of:

(i) The price paid by the producer of exported goods for materials originating in either the United States or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(ii) When not included in that price, the following costs related thereto:

(A) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1)(i) of this section to the location of the producer;

(B) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(C) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(D) The value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(3) *Interpretation.* (i) *Price paid.* As provided in paragraph (b)(1) of this section, the "price paid" for materials by the producer of exported goods forms the basis for determining the value of such materials when incorporated in the exported goods. The actual price paid for such materials will determine the value of those materials for purposes of the value-content requirement, even though a relationship between the producer and the seller of the materials may have influenced the price, except where the price did not include items specified in paragraph (b)(1)(ii) of this section that relate to the materials. The following examples will illustrate these principles. Notwithstanding these examples, the totality of the facts must be examined in each case to determine whether § 10.304(b) is applicable.

Example 1. Non-originating materials are sold by Company X (a foreign corporation located outside the United States or Canada) to Company Y (a Canadian corporation) for $100; Company X also sold identical materials to Company Z (a U.S. corporation) for $200 which was the price Company Z had paid to Company X for similar materials prior to implementation of the Agreement; and those non-originating materials sold by Company X to Company Y are then incorporated by Company Y into goods exported to the United States. In this case the $100 price paid by Company Y to Company X constitutes the value of those materials for purposes of the value-content requirement.

Example 2. Company X purchased materials for $100, added a four percent mark-up to the price paid to defray purchasing expenses, and then sold the marked-up materials to Company Y (a Canadian corporation) which incorporated the materials in goods exported to the United States. In this case the $104 price paid by Company Y to Company X constitutes the value of the materials for purposes of the value-content requirement.

Example 3. Company X (a foreign corporation located outside the United States) sold non-originating materials to Company Y (a U.S. corporation) for $200, and Company Y then sold those materials for $100 to Company Z (a Canadian corporation) which incorporated the materials in goods which were imported into the United States by Company P (the U.S. parent company of Company Y). In this case, in accordance with paragraph (b)(1)(ii)(D) of this section, $100 would be added to the price paid by Company Z for purposes of the value-content requirement because the materials were sold at a reduced cost within the meaning of subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(ii) *Originating materials for which no price paid.* In cases involving a vertically integrated producer (that is, an entity which produces goods for export from materials which that producer has also made) a "price paid" for such originating materials normally does not exist. Even in the absence of a "price paid", such a vertically integrated producer may still claim the materials as originating materials for purposes of qualifying the finished goods exported to the United States as goods originating in Canada. However, under paragraph (b)(1)(i) of this section the value of those materials for purposes of applying the value-content requirement is limited to the price paid for those materials imported from the third country plus any costs added thereto under paragraph (b)(1)(ii) of this section. The following examples will illustrate these principles.

Example 1. If an automobile producer in the United States or Canada fabricates body panels wholly from third country steel coil, those body panels can qualify as originating materials without having to satisfy a value-content requirement because steel coil is classified in chapter 72 of the Harmonized System and body panels are classified in chapter 87 and the change in classification rules in chapter 87 do not incorporate a value-content requirement in this context. Thus, the producer can claim the body panels fabricated from the third country steel as originating materials for purposes of the value-content requirement applicable to the finished automobile which will be exported to the United States. The value of those originating materials is the price paid for the steel coil imported from the third country and used or consumed in the production of the body panels.

Example 2. An automobile exporter in Canada purchases and imports body panels fabricated in a third country in order to join them with vertically (locally) fabricated body panels to form an automobile body. If the body qualifies as an originating material, the exporter has two options. Under the first option, the exporter can claim the body as originating material, in which case the value of originating material is the price paid for the foreign body panels. Under the second option, the exporter may elect not to claim the body as originating material; but, rather, the exporter may claim as originating material any domestic steel coil used in producing the vertically (locally) fabricated body panels, in which case the value of originating materials is the price paid for the domestic steel coil.

(c) *Value of goods when exported.* The term "value of the goods when exported to the United States" means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

5. Section 10.307 is amended by revising paragraphs (a) through (d) to read as follows:

§ 10.307 Documentation.

(a) *Claims for a preference.* A preference in accordance with the Agreement may be claimed by including on the entry summary, or equivalent documentation, the symbol "CA" as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* Failure to make a timely claim for a preference under the Agreement will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* A claim for a preference under the Agreement shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed and shall be presented to the district director upon request.

(d) *Exporter's Certificate of Origin.* (1) *General.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, DC 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(2) *Blanket certifications.* A blanket Exporter's Certificate of Origin, not to exceed a period of 12 months, issued for goods claimed as originating goods under the Agreement, can only be used if the certifying exporter is able to verify that the goods in each shipment to be covered by the blanket certification actually qualify for treatment under the Agreement. A blanket certification does not allow an exporter to average its costs over the blanket certification period in order to establish that the exported goods meet the criteria for originating goods under the Agreement. Under § 10.308, the exporter must retain supporting records that will permit a review of the eligibility of the goods in each shipment covered by a blanket certification.

* * * * *

6. In § 10.310(b), the first sentence is revised to read as follows:

§ 10.310 Election to average for motor vehicles.

* * * * *

(b) * * *

"An election to average shall be binding at the time of the first entry of vehicles for which the election has been made and shall remain binding for the plant for the entire period covered by the election."

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continued to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * * * *	* *	
§ 10.84	Origin certificate for automotive products from Canada	1515–0164
§§ 10.307, 10.310, and 10.311	Claim for duty-free entry and election to average for automotive products under the U.S.-Canada Free Trade Agreement.	1515–0164
* * * * *	* *	

Carol Hallett,
Commissioner of Customs.

Approved: December 18, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 92–1437 Filed 1–21–92; 8:45 am]

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19 CFR Part 24

[T.D. 92-7]

Update of Ports Subject to the Harbor Maintenance Fee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: Commercial cargo loaded on or unloaded from commercial vessels at certain ports is subject to the harbor maintenance fee pursuant to the Water Resources Development Act of 1986 and interim Customs Regulations regarding the harbor maintenance fee. This document amends the list of ports subject to the fee. This amendment is made to further clarify the port descriptions and to update the list as to locations which are exempt from the fee.

DATES: The port descriptions are effective as of January 22, 1992. Written comments must be received by February 21, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20029.

FOR FURTHER INFORMATION CONTACT: Patricia Barbare, User fee Task Force, (202) 566–8648.

SUPPLEMENTARY INFORMATION:

Background

The Water Resources Development Act of 1986 (Pub. L. 99–662) established a Harbor Maintenance Trust Fund to be used for improving and maintaining ports and harbors in the U.S. Pursuant to the Act, this fund is supported by a harbor maintenance fee assessed on port use by vessels carrying water-borne commercial cargo. By assessing a charge for port use, the Act causes those shippers and importers who benefit from the maintenance of a Federal port or harbor to share in the cost of that maintenance.

The Act defines port generally as any channel or harbor or component thereof in the U.S. which is not an inland waterway, is open to public navigation, and at which Federal funds have been used since 1977 for construction, maintenance or operation.

Customs published T.D. 87–44 in the **Federal Register** (52 FR 10198) on March 30, 1987, establishing interim regulations for the collection of the harbor maintenance fee. The regulations are set forth in § 24.24, Customs Regulations (19 CFR 24.24). When drafting T.D. 87–44, Customs, in conjunction with the U.S. Army Corps of Engineers, took the definition of port in the Act and established a list of ports in § 24.24(b)(1), Customs Regulations (19 CFR 24.24(b)(1)). The list of ports includes in the descriptions and notations column the description of movements which are considered intraport; pursuant to the Water Resources Development Act and § 24.24(d)(1) of the regulations, the fee is not to be assessed on the mere movement of commercial cargo within a port. Commercial ports with depths of less than nine feet were not included on the list. Customs stated in T.D. 87–44 that the list is subject to change and will be amended, if necessary, to reflect money spent by the U.S. Army Corps of Engineers for construction, maintenance or operation of any port not on the list.

On July 14, 1987, Customs published a clarifying amendment to the harbor maintenance fee interim regulations in the **Federal Register** (52 FR 26297) reformatting the list of ports to assist users.

On May 9, 1991, Customs published in the **Federal Register** (56 FR 21445), T.D. 91–44, an amendment to the interim harbor maintenance fee regulations that increased the fee pursuant to the Omnibus Budget Reconciliation Act of 1990, and changed certain forms used for remitting payments, requesting refunds and making supplemental payments.

In this document, Customs again is amending the interim regulations on the harbor maintenance fee to clarify the listing in § 24.24(b)(1) of ports subject to the harbor maintenance fee. The Army Corps of Engineers has informed Customs that the list published in 1987 inadvertently included some areas that did not have Army Corps of Engineers work done there and excluded some areas in which Army Corps of Engineers work was done. Further, the Army Corps of Engineers has determined that clarification is necessary regarding the intraport nature of certain movements. Customs is amending § 24.24(b)(1) accordingly.

Comments

It is noted that the harbor maintenance fee regulations are still interim. While the comment period has expired on the main portion of the interim regulations (see 52 FR 20593, dated June 2, 1987; extension of comment period on interim regulations to August 28, 1987), Customs will give consideration to any written comments (preferably in triplicate) timely submitted relating to the description of the ports set forth in this document. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs