Dated: March 2, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, 178 and 191

[CBP Dec. 05–07]

RIN 1505–AB47

United States-Chile Free Trade Agreement

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs and Border Protection (''CBP'') Regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Chile Free Trade Agreement entered into by the United States and the Republic of Chile.

DATES: Interim rule effective March 7, 2005; comments must be received by June 6, 2005.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (''RIN'') and/or by the title ''United States-Chile Free Trade Agreement,'' by *one* of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site. The Department of Homeland Security (''DHS''), including CBP, has joined the Environmental Protection Agency (''EPA'') online public docket and comment system on its Partner Electronic Docket System (''Partner EDOCKET''). As an agency of the DHS, CBP will use the EPA Federal Partner EDOCKET system.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail, hand delivery or courier: paper, disk or CD–ROM submissions may be mailed or delivered to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number (if available) or RIN number for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., (5th Floor), Washington, DC during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of Field Operations, (202) 344–1959.

Other Operational Aspects: Lori Whitehurst, Office of Field Operations, (202) 344–2722.

Audit Aspects: Mark Hanson, Office of Regulatory Audit, (202) 344–2877.

Legal Aspects: Edward Leigh, Office of Regulations and Rulings, (202) 572–8827.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2003, the United States and the Republic of Chile (the ''Parties'') entered into an agreement, the U.S.-Chile Free Trade Agreement (''US-CFTA''). The stated objectives of the US-CFTA are to: Encourage expansion and diversification of trade between the Parties; eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; substantially increase investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the US-CFTA, for its joint administration and for the resolution of disputes; and establish a framework for further bilateral and multilateral cooperation to expand and enhance the benefits of the US-CFTA.

The provisions of the US-CFTA were adopted by the United States with the enactment of the United States-Chile Free Trade Agreement Implementation Act (the ''Act''), Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note)(2003).

Customs and Border Protection (CBP) has the responsibility to administer the provisions of the US-CFTA and the Act which relate to the importation of goods into the United States from Chile. Those customs-related US-CFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin and Origin Procedures) and Chapter Five (Customs Administration).

The tariff-related provisions within US–CFTA Chapter Three which require regulatory action by CBP are Article 3.7 (Temporary Admission of Goods), Article 3.8 (Drawback and Duty Deferral Programs), Article 3.9 (Goods Re-Entered after Repair or Alteration), Article 3.10 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials) and Article 3.20 (Rules of Origin and Related Matters).

Chapter Four of the US-CFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Chile (US-CFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 4.1 and Annex 4.1 of the US-CFTA. Under Article 4.1 within that Chapter, originating goods may be grouped in three broad categories: (1) Goods which are wholly obtained or produced entirely in one or both of the Parties; (2) goods which are produced entirely in those countries and which satisfy the specific rules of origin in US-CFTA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement); and (3) goods which are produced entirely in one or both of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Article 4.3 sets forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* rule. Article 4.4 sets forth the rules for determining whether accessories, spare parts or tools delivered with a good qualify as material used in the production of such good. Article 4.6 provides for accumulation of production by two or more producers. Article 4.7 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter

Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations. The basic rules of origin in Chapter Four of the US-CFTA are set forth in General Note 26, Harmonized Tariff Schedule of the United States (HTSUS). In addition, Section B of Chapter Four sets forth the procedural requirements which apply under the US-CFTA, in particular with regard to claims for preferential tariff treatment.

Chapter Five sets forth the customs operational provisions related to the implementation and continued administration of US-CFTA.

In order to provide transparency and facilitate their use, the majority of the US-CFTA implementing regulations set forth in this document have been included within new subpart H in Part 10 of the CBP Regulations (19 CFR). However, in those cases in which US-CFTA implementation is more appropriate in the context of an existing regulatory provision, the US-CFTA regulatory text has been incorporated in an existing Part within the CBP Regulations. In addition, this document sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new US-CFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

To create new subpart H of 19 CFR part 10, the existing sections in that part have been re-designated into subparts A through G.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding a sentence at the end stating that, as regards the goods described in the added sentence, no bond or other security will be required in the case of goods originating in Chile. The provisions of US-CFTA Article 3.7 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in part 10 of the CBP Regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart H

General Provisions

Section 10.401 outlines the scope of new subpart H, part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in subpart H, part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP Regulations. Thus, for example, the specific merchandise entry requirements contained in subpart H, part 10 are in addition to the basic entry requirements contained in parts 141–143 of the regulations.

Section 10.402 sets forth definitions of common terms used in multiple contexts or places within subpart H, part 10. Although the majority of the definitions in this section are based on definitions contained in Article 2.1 and Annex 2.1 of the US-CFTA or in § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited subpart H context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.410 sets forth the procedure for claiming US-CFTA tariff benefits at the time of importation and, as provided in US-CFTA Article 4.12, requires a U.S. importer to file a declaration, and to correct a declaration that contains incorrect information, in connection with the claim. Section 10.410 also implements US-CFTA Article 4.12 by requiring that the declaration that the goods are US-CFTA originating goods be based on a certification of origin which is in the possession of the importer.

Section 10.411 implements US-CFTA Article 4.14 which concerns the obligations of an importer regarding the submission of a certification of origin to CBP and the maintenance of the certification and other relevant records regarding the imported good. Included in § 10.411 is a provision that a certification of origin may be used either for a single importation or for multiple importations of identical goods.

Section 10.416, which is based on US-CFTA Article 4.16, authorizes the denial of US-CFTA tariff benefits if the importer fails to comply with the requirements of Subpart H, Part 10.

Tariff Preference Level

Sections 10.420 and 10.421, which are based on US-CFTA Article 3.20, require an importer claiming preferential tariff treatment under a tariff preference level (TPL) to make a statement containing information demonstrating that a good satisfies the requirement for entry under the TPL.

Export Requirements

Section 10.430 implements US-CFTA Article 4.15 which concerns use of a certification of origin for purposes of certifying that an exported good is an originating good and thus entitled to preferential tariff treatment under the US-CFTA. This section also implements US-CFTA Article 4.15.3 which requires an exporter or producer to promptly provide written notification of errors in a certification to any person to whom the certification was given.

Section 10.430 concerns the maintenance of records by a U.S. exporter or producer who executes a certification of origin, as required by US-CFTA Article 4.15 and by 19 U.S.C. 1508 as amended by § 207 of the Act. Section 10.430 also concerns the availability of those records both to CBP and to the Chilean customs administration.

Section 10.431 concerns measures applied for a failure of a U.S. exporter or producer to comply with a requirement of subpart H, part 10 and is based on US-CFTA Article 4.16.

Post-Importation Duty Refund Claims

Sections 10.440 through 10.442 implement US-CFTA Article 4.12, which allows an importer, who did not claim US-CFTA tariff benefits on a qualifying good at the time of importation, or a non-qualifying apparel good claiming a TPL, to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of Origin

Sections 10.450 through 10.463 provide the implementing regulations regarding the rules of origin provisions of HTSUS General Note 26 and US-CFTA Chapter Four.

Definitions

Section 10.450 sets forth terms that are defined for purposes of the Rules of Origin.

General Rules of Origin

Section 10.451 sets forth the basic rules of origin established in Chapter Four of the US-CFTA. The provisions of § 10.451 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 26, HTSUS.

Section 10.451(a) lists those goods which are originating goods because they are wholly obtained or produced entirely in the U.S., Chile, or both. Section 10.451(c) provides that goods, produced entirely in the U.S. or Chile from originating materials, are originating goods.

Section 10.451(b) sets forth the basic rules of origin for goods which are produced with any non-originating material content. Essential to the rules in § 10.451(b) are the specific rules of General Note 26(n), HTSUS, which are incorporated by reference. Under paragraph (b)(1) of § 10.451, a good will qualify as an originating good only if all non-originating materials used in the production of the good undergo the applicable change in tariff classification, set forth in General Note 26(n), as a result of processing performed entirely in the US-CFTA countries. Under paragraph (b)(2) of § 10.451, a regional value content requirement must be satisfied in addition to a change in tariff classification for certain cases as specified by the rules of General Note 26(n), and, for other cases, only a regional value content must be satisfied. In all cases, the good must also satisfy all other requirements of the note.

Section 10.452 sets forth the rule that a good or material is not an originating good or material as a result of simple combining or packaging operations or mere dilution with a substance that does not materially alter the characteristics of the good or material.

Value Content

Section 10.454 sets forth the basic rules which apply for purposes of determining whether an imported good satisfies a minimum regional value content (RVC) requirement. Section 10.455 sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accessories, spare parts or tools. Section 10.456 specifies when certain accessories, spare parts or tools will be treated as a material used in the production of the good.

Fungible goods and materials. Section 10.457 sets forth the rules by which ''fungible'' goods or materials may be claimed as originating.

Accumulation of Production

Section 10.458 sets forth the rule by which originating goods or materials from the territory of Chile or the United States that are used in the production of a good in the territory of the other country will be considered to originate in the territory of such other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of Chile or the United States, or both, is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the US-CFTA.

De Minimis

Section 10.459 sets forth a *de minimis* rule by which goods that fail to qualify as originating under the rules in § 10.451 may be considered originating goods for preferential tariff treatment. There are a number of exceptions to the *de minimis* rule as well as a separate rule for textile and apparel goods.

Indirect materials. Section 10.460 provides that indirect materials are considered to be originating materials without regard to where they are produced.

Packaging materials; packing materials. Sections 10.461 and 10.462 provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin for purpose of the change in tariff classification requirement of the General Note 26(n). These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Transshipment

Section 10.463 sets forth the rule that with certain exceptions, an originating good loses its originating status and is treated as a non-originating good if, subsequent to the production in a US-CFTA country that qualifies the good as originating, the good undergoes production in a territory outside that of a US-CFTA country.

Origin Verifications and Determinations

Sections 10.470 through 10.474 implement the provisions of US-CFTA Article 4.16 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to US-CFTA preferential duty treatment and the issuance and application of origin determinations resulting from such verifications. These sections also govern the conduct of verifications directed to producers of materials that are used in the production of a good for which US-CFTA preferential duty treatment is claimed.

Section 10.470 provides for the verification by CBP of a claim for US-CFTA tariff treatment and any information submitted in support of the claim. This section further provides that, if CBP is prevented from conducting a verification, the claim may be denied.

Section 10.471 provides for textile and apparel goods imported into the United States to be reviewed by Chilean authorities (at the request of CBP), regardless of whether a claim is made for preferential tariff treatment. CBP may also assist in a verification in Chile under this section.

Section 10.471 also provides for specific actions to be taken during and after the verification if directed by the Committee for the Implementation of Textile Agreements. These actions can be taken on the specific goods subject to the verification or to similar goods, or to any textile or apparel goods being imported into the United States by the entity subject to the verification.

Section 10.472 provides for textile and apparel goods exported from the United States to Chile to be reviewed by CBP (at the request of Chilean authorities),

Section 10.473 implements US-CFTA Article 4.16.3 by providing for the issuance of a written determination of origin based on an analysis of the results of the origin verification. This section also prescribes the information required to be included in the written determination and includes special content and issuance requirements in the case of a negative origin determination.

Penalties

Section 10.480 concerns the general application of penalties to US-CFTA transactions and is based on US-CFTA Article 5.9.

Section 10.481 reflects US-CFTA Article 4.16 with regard to exceptions to the application of penalties in the case of an importer who voluntarily makes a corrected declaration (as provided for in US-CFTA Article 4.12—see § 10.410(b)).

Section 10.482 reflects US-CFTA Article 4.15 with regard to exceptions to the application of penalties in the case of an exporter or producer who voluntarily provides notice of an incorrect certification of origin (*see* § 10.411). Section 10.483, which sets forth standards for determining whether the correction or notice is effected ''voluntarily'', is based on the standards applied for prior disclosures under 19 U.S.C. 1592 as set forth in § 162.74 of the CBP Regulations.

Goods Returned After Repair or Alteration

Section 10.490 implements US-CFTA Article 3.9 regarding duty treatment on goods re-entered after repair or alteration in Chile.

Part 24

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement § 204 of the US-CFTA, providing that the MPF is not applicable to goods that qualify as originating goods as provided for in the US-CFTA.

Part 162

Part 162 contains regulations regarding the inspection and examination of merchandise involved in importation. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional US-CFTA records maintenance and examination provisions contained in new subpart H, part 10.

Part 163

A conforming amendment is made to § 163.1 to include the completion of a Chile certification of origin and any other supporting documentation pursuant to the US-CFTA as an activity for which records must be maintained. Also, the list appearing in Appendix to § 163 (commonly known as the (a)(1)(A) list) is also amended to add the Chile certification of origin, required by new § 10.410.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-CFTA and the Act.

Part 191

Part 191 contains regulations regarding drawback. A cross-reference is added to § 191.0, which is the scope section of the part, to refer readers to the additional US-CFTA drawback provisions contained in new subpart H, part 10.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to CBP by e-mail, mail, hand delivery or courier, including comments on the clarity of these interim regulations and how they may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 103.11(b) of the CBP Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW., (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768. Comments may also be accessed on the EPA Partner EDOCKET Web site or Federal eRulemaking Portal. For additional information on accessing comments via the EPA Partner EDOCKET Web site or Federal eRulemaking Portal, see the **ADDRESSES** section of this document.

Inapplicability of Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard notice and comment procedures and requirement for a delayed effective date do not apply to agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve the foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the US-CFTA.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP finds that providing notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because they establish procedures that the public needs to know in order to claim the benefit of a tariff preference under the Act. The US-CFTA went into effect on January 1, 2004, and the importing public needs the certainty of regulations as soon as possible.

Finally, section 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. For the reasons described above, CBP has determined that these regulations grant an exemption and relieve restrictions and that good cause exists for dispensing with a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117.

The collections of information in these regulations are in §§ 10.410 and 10.411. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the US-CFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-CFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 8,000 hours.

Estimated average annual burden per respondent: 0.2 hours.

Estimated number of respondents: 40,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document is Fernando Peña, Attorney, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices and the Department of the Treasury participated in its development.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or her/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements (United States-Chile Free Trade Agreement).

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 191

Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

■ 1. The general authority citation for part 10 is revised, and the specific authority for new subpart H is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

■ 2. Sections 10.1 through 10.183 are designated as new Subpart A and a subpart heading is added previous to the undesignated heading ''Articles Exported and Returned'' to read as follows:

Subpart A—General Provisions

* * * * *

■ 3. Sections 10.191 through 10.199 are designated as new Subpart B, the undesignated heading ''Caribbean Basin Initiative'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart B—Caribbean Basin Initiative

* * * * *

■ 4. Sections 10.201 through 10.207 are designated as new Subpart C, the undesignated heading ''Andean Trade Preference'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart C—Andean Trade Preference

* * * * *

■ 5. Sections 10.211 through 10.217 are designated as new Subpart D, the undesignated heading ''Textile and Apparel Articles Under the African Growth and Opportunity Act'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart D—Textile and Apparel Articles Under the African Growth and Opportunity Act

* * * * *

■ 6. Sections 10.221 through 10.237 are designated as new Subpart E and a subpart heading is added previous to the undesignated heading ''Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act'' to read as follows:

Subpart E—United States-Caribbean Basin Trade Partnership Act

* * * * *

■ 7. Sections 10.241 through 10.257 are designated as new Subpart F and a new subpart heading is added previous to the undesignated heading ''Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act'' to read as follows:

Subpart F—Andean Trade Promotion and Drug Eradication Act

* * * * *

■ 8. Sections 10.301 through 10.311 are designated as new Subpart G, the undesignated heading ''United States-Canada Free Trade Agreement'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart G—United States-Canada Free Trade Agreement

* * * * *

■ 9. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico or Chile and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating in Canada, Mexico or Chile within the meaning of General Note 12 or 26, HTSUS.

* * * * *

§ 10.36a [Amended]

■ 10. In § 10.36a, the first sentence of paragraph (a) is amended by removing the words ''(as defined in §§ 10.8 and 181.64 of this chapter)'' and adding, in their place, the words ''(as defined in §§ 10.8, 10.490 and 181.64 of this chapter)''.

■ 11. Part 10, CBP Regulations, is amended by adding a new Subpart H to read as follows:

Subpart H—United States-Chile Free Trade Agreement

General Provisions

Import Requirements

Tariff Preference Level

Export Requirements

Post-Importation Duty Refund Claims

Rules of Origin

Origin Verifications and Determinations

Penalties

Goods Returned After Repair or Alteration

Subpart H—United States-Chile Free Trade Agreement

General Provisions

§ 10.401 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Chile Free Trade Agreement (the US-CFTA) entered into on June 6, 2003, and under the United States-Chile Free Trade Agreement Implementation Act (the Act; 117 Stat. 909). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US-CFTA and the Act are contained in parts 12, 24, 162, 163 and 191 of this chapter.

§ 10.402 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Certification.* ''Certification'' means, either when used by itself or in the expression ''certification of origin'', the certification established under article 4.13 of the US-CFTA, that a good qualifies as an originating good under the US-CFTA;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US-CFTA to an originating good;

(d) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,* which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the US-CFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(h) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(i) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994,* which is part of the *WTO Agreement;*

(j) *Goods.* ''Goods'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

(k) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States

or Chile but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Chile, including—

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(o) *National.* ''National'' means a natural person who has the nationality of a Party according to Annex 2.1 of the US-CFTA or a permanent resident of a Party;

(p) *Originating.* ''Originating'' means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures) of the US-CFTA;

(q) *Party.* ''Party'' means the United States or the Republic of Chile;

(r) *Person.* ''Person'' means a natural person or an enterprise;

(s) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the US-CFTA to an originating good;

(t) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(u) *Tariff preference level.* ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment as if such goods were originating based on the goods meeting the production requirements set forth in § 10.421 of this subpart.

(v) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(w) *Territory.* ''Territory'' means:

(1) With respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

Import Requirements

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for an originating good under the US-CFTA, the U.S. importer must make a written declaration that the good qualifies for such treatment. The written declaration is made by including on the entry summary, or equivalent documentation, the symbol ''CL'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via electronic interchange.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration, submit a letter or other written statement to the CBP office where the original declaration was filed specifying the correction and pay any duties that may be due.

§ 10.411 Certification of origin.

(a) *Contents.* An importer who claims preferential tariff treatment on a good must submit, at the request of the port director, a certification that the good qualifies as originating. A certification submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good (if known);

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 26(n), HTSUS;

(vi) The preference criterion as set forth in paragraph (e) of this section;

(vii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certification was given of any changes that could affect the accuracy or validity of this certification; and

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the United States-Chile Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

(1) A certification that the good qualifies as originating issued by the producer; or

(2) Knowledge of the exporter or importer that the good qualifies as an originating good.

(c) *Language.* The certification must be completed either in the English or

Spanish language. If the certification is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification.

(d) *Applicability of certification.* A certification may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods as originating.

(e) *Preference criteria.* The preference criterion to be included on the certification as required in paragraph (a)(2)(vi) of this section is as follows:

(1) Preference criterion ''A'', refers to a good that is wholly obtained or produced entirely in the territory of Chile or of the United States, or both (see General Note 26(b)(i), HTSUS);

(2) Preference criterion ''B'', refers to a good that is produced entirely in the territory of Chile or the United States, or both (*see* General Note 26(b)(ii), HTSUS), and

(i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, or

(ii) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS;

(3) Preference criterion ''C'' refers to a good that is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials (see General Note 26(b)(iii), HTSUS).

§ 10.412 Importer obligations.

(a) *General.* An importer who makes a declaration under § 10.410(a) is responsible for the truthfulness of the declaration and of all the information and data contained in the certification, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents.

(b) *Compliance.* In order to make a claim for preferential treatment under § 10.410 of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification as set forth in § 10.411 of this subpart; and

(2) May be required to demonstrate that the conditions set forth in § 10.463 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer.* The fact that the importer has issued a certification based on information provided by the exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section. A U.S. importer who voluntarily makes a corrected declaration will not be subject to penalties for having made an incorrect declaration (*see* § 10.481 of this subpart).

(d) *Internal controls.* In accordance with Part 163 of this chapter, importers are expected to establish and implement internal controls which provide for the periodic review of the accuracy of the certifications or other records referred to in paragraph (b)(1) of this section.

§ 10.413 Validity of certification.

A certification that is completed, signed and dated in accordance with the requirements listed in § 10.411 will be accepted by CBP as valid for four years from the date on which the certification was signed. If the port director determines that a certification is illegible or defective or has not been completed in accordance with § 10.411, the importer will be given a period of not less than five business days to submit a corrected certification.

§ 10.414 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification that the good qualifies for preferential tariff treatment for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification that the good qualifies as originating. The importer must submit such a certification within 30 calendar days from the date of the written notice. Failure to timely submit the certification or information will result in denial of the claim for preferential tariff treatment.

§ 10.415 Maintenance of records.

(a) *General.* An importer claiming preferential treatment for a good imported into the United States must maintain in the United States, for five years after the date of importation of the good, a certification (or a copy thereof) that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and,

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Method of maintenance.* The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin under § 10.411(a) or submission of a corrected certification under § 10.413, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.463 were met.

Tariff Preference Level

§ 10.420 Filing of claim for tariff preference level.

A cotton or man-made fiber fabric or apparel good described in § 10.421 that does not qualify as an originating good under § 10.451 may nevertheless be entitled to preferential tariff treatment under the US-CFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 for a good described in § 10.421(a) or (b) or 9911.99.40 for a good described in § 10.421(c)) immediately above the applicable subheading in Chapter 52 through 62 of the HTSUS under which each non-originating cotton or man-made fiber fabric or apparel good is classified.

§ 10.421 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.420:

(a) *Woven fabrics.* Certain woven fabrics of Chapters 52, 54 and 55 of the HTS (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516) that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods, if they are wholly formed in the U.S. or Chile regardless of the origin of the yarn used to produce these fabrics.

(b) *Cotton or man-made fabric goods.* Certain cotton or man-made fabric goods of Chapters 58 and 60 of the HTS that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods if they are wholly formed in the U.S. or Chile regardless of the origin of the fibers used to produce the spun yarn or the yarn used to produce the fabrics.[1]

(c) *Cotton or man-made apparel goods.* Cotton or man-made apparel goods in Chapters 61 and 62 of the HTS that are both cut (or knit-to-shape) and sewn or otherwise assembled in the U.S. or Chile regardless of the origin of the fabric or yarn, provided that they meet the applicable conditions for preferential tariff treatment under the US-CFTA, other than the condition that they are originating goods.

§ 10.422 Submission of certificate of eligibility.

(a) *Contents.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber fabric or apparel good must submit, at the request of the port director, a certificate of eligibility containing information demonstrating that the good satisfies the requirements for entry under the applicable TPL, as set forth in § 10.421. A certificate of eligibility submitted to CBP under this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good;

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification of the good, to six or more digits, as well as the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 or 9911.99.40);

(vi) For a single shipment, the commercial invoice number;

(vii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certificate; and

The goods were produced in the territory of one or more of the parties, and comply with the preference requirements specified for those goods in the United States-Chile Free Trade Agreement and Chapter 99, subchapter XI of the HTSUS. There has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certificate of eligibility required to be submitted under this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certificate of eligibility must be completed either in the English or Spanish language. If the certificate is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certificate;

(d) *Applicability of certificate of eligibility.* A certificate of eligibility may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment under an applicable TPL.

§ 10.423 Certificate of eligibility not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certificate of eligibility for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing TPL claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certificate of eligibility. The

[1] The relevant HTS subheadings for fabric goods in Chapters 58 or 60 eligible under HTS 9911.99.20 are as follows: 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20.0020, 5802.30.0030, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30.0020, 5805.00.30, 5805.00.4010, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.2010, 5807.10.2020, 5807.90.05, 5807.90.2010, 5807.90.2020, 5808.10.40, 5808.10.70, 5808.90.0010, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, 6006.44.

importer must submit such a certificate within 30 calendar days from the date of the written notice. Failure to timely submit the certificate will result in denial of the claim for preferential tariff treatment.

§ 10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certificate of eligibility under § 10.422, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.425 were met.

§ 10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *General.* A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Export Requirements

§ 10.430 Export requirements.

(a) *Submission of certification to CBP.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must provide a copy of the certification (or such other medium or format approved by the Chile customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* An exporter or producer in the United States who has completed and signed a certification of origin, and who has reason to believe that the certification contains or is based on information that is not correct, must immediately after the date of discovery of the error notify in writing all persons to whom the certification was given by the exporter or producer of any change that could affect the accuracy or validity of the certification.

(c) *Maintenance of records*—(1) *General.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must maintain in the United States, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including records and documents associated with:

(i) The purchase of, cost of, value of, and payment for, the good;

(ii) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(iii) Where appropriate, the production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained in accordance with the Generally Accepted Accounting Principles applied in the country of production and in the case of exporters or producers in the United States must be maintained in the same manner as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the exporter's or producer's records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

§ 10.431 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

Post-Importation Duty Refund Claims

§ 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this part. Subject to the provisions of § 10.416 of this part, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.442(c) of this part.

§ 10.441 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.440 of this part must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this part, a copy of a certification that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law; and if any such protest or petition or request for reliquidation has been filed, the statement must identify the protest, petition or request by number and date.

§ 10.442 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.441 of this part, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director will suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under § 10.441 of this part if the claim was not filed timely, if the importer has not complied with the requirements of § 10.441 of this part, if the certification submitted under § 10.441(b)(2) of this part cannot be accepted as valid (see § 10.413 of this part), or if, following initiation of an origin verification under § 10.470 of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.470 of this part.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason for the denial will be given to the importer.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give written notice of the denial and the reason for the denial to the importer.

Rules of Origin

§ 10.450 Definitions.

For purposes of §§ 10.450 through 10.463:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in § 10.450(m) of this subpart;

(b) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials.* ''Fungible goods or materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) *Good.* ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced on board factory ships from the goods referred to in paragraph (f)(5) provided such factory ships are registered or recorded with that Party and fly its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

(11) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(10) of this section, or from their derivatives, at any stage of production;

(g) *Importer.* ''Importer'' means a person who imports goods into the territory of a Party;

(h) *Issued.* ''Issued'' means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

(i) *Location of the producer.* ''Location of the producer'' means site of production of a good;

(j) *Material.* ''Material'' means a good that is used in the production of another good, including a part, ingredient, or indirect material;

(k) *Non-originating good.* ''Non-originating good'' means a good that does not qualify as originating under this subpart;

(l) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart;

(m) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18, US-CFTA;

(q) *Remanufactured goods.* ''Remanufactured goods'' means industrial goods assembled in the territory of a Party, listed in Annex 4.18, US-CFTA, that:

(1) Are entirely or partially comprised of recovered goods;

(2) Have the same life expectancy and meet the same performance standards as new goods; and

(3) Enjoy the same factory warranty as such new goods; and

(r) *Self-produced material.* ''Self-produced material'' means a material that is produced by the producer of a good and used in the production of that good; and

(s) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.451 Originating goods.

A good imported into the customs territory of the United States will be considered an originating good under the US-CFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of Chile or of the United States, or both; or

(b) The good is produced entirely in the territory of Chile or of the United States, or both, satisfies all other applicable requirements of this subpart, and

(1) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS; or

(c) The good is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials.

§ 10.452 Exclusions.

A good will not be considered to be an originating good and a material will not be considered to be an originating material by virtue of having undergone:

(a) Simple combining or packaging operations; or

(b) Mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

§ 10.453 Treatment of textile and apparel sets.

Notwithstanding the specific rules specified in General Note 26(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be regarded as originating goods unless each of the goods in the set is an originating good or the non-originating goods in the set do not exceed 10 percent of the adjusted value of the set.

§ 10.454 Regional value content.

Where General Note 26, subdivision (n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good may be calculated, at the choice of the person claiming the tariff treatment authorized by this note for such good, on the basis of the build-down method or the build-up method described in this section, unless otherwise specified in the note.

(a) *Build-down method.* For the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV–VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials used by the producer in the production of the good; or

(b) *Build-up method.* For the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials used by the producer in the production of the good.

§ 10.455 Value of materials.

(a) *Calculating the regional value content.* For purposes of calculating the regional value content of a good under General Note 26(n), HTSUS, and for purposes of applying the *de minimis* (see § 10.459) provisions of subdivision (e) of the note, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the producer's price actually paid or payable for the material;

(3) In the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

(i) All expenses incurred in the growth, production or manufacture of the material, including general expenses, and

(ii) A reasonable amount for profit; or

(4) In the case of a material that is self-produced, the sum of—

(i) All expenses incurred in the production of the material, including general expenses, and

(ii) A reasonable amount for profit.

(b) *Adjustments to value.* The value of materials may be adjusted as follows:

(1) For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of Chile or of the United States.

(c) *Accounting method.* Any cost or value referenced in General Note 26(n), HTSUS and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States).

§ 10.456 Accessories, spare parts or tools.

Accessories, spare parts or tools that form part of the good's standard accessories, spare parts or tools and are delivered with the good will be treated as a material used in the production of the good, if—

(a) The accessories, spare parts or tools are classified with and not invoiced separately from the good; and

(b) The quantities and value of the accessories, spare parts or tools are customary for the good.

§ 10.457 Fungible goods and materials.

(a) A person claiming preferential tariff treatment under the US-CFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means—

(1) Averaging,

(2) ''Last-in, first-out,''

(3) ''First-in, first-out,'' or

(4) Any other method that is recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States) or otherwise accepted by that country.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

§ 10.458 Accumulation.

(a) Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country will be considered to originate in the territory of the other country for purposes of determining the eligibility of the goods or materials for preferential tariff treatment under the US-CFTA.

(b) A good that is produced in the territory of Chile, the United States, or both, by one or more producers, will be considered as an originating good if the good satisfies the applicable requirements of § 10.451 and General Note 26, HTSUS.

§ 10.459 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 26(n), HTSUS, will nonetheless be considered to be an originating good if—

(1) The value of all non-originating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of such non-originating materials is included in calculating the value of non-originating materials for any applicable regional value-content requirement under this note; and

(3) The good meets all other applicable requirements of General Note 26(n), HTSUS.

(b) Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(2) A non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(3) A non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11 through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(4) A non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(5) A non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(6) A non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(7) A non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this section.

(c) A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good because certain fibers or yarns used in the production of the

component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. A good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, if a good is a fiber, yarn or fabric, the component of the good that determines the tariff classification of the good is all of the fibers in the yarn, fabric or group of fibers.

§ 10.460 Indirect materials.

An indirect material, as defined in § 10.402(n), will be considered to be an originating material without regard to where it is produced.

Example. Chilean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.451(b)(1) and General Note 26(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.461 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the US-CFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 26(n), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Chilean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.455(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* § 10.454(a)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the United States importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§ 10.462 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS. Accordingly, such materials and containers do not have to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Chilean Producer A produces good C. Producer A ships good C to the United States in a shipping container which it purchased from Company B in Chile. The shipping container is originating. The value of the shipping container determined under section § 10.455(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100–$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.463 Transit and transshipment.

(a) *General.* A good will not be considered an originating good by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.470 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP.* A claim for preferential treatment made under § 10.410, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but is not limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, supporting accounting and financial records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence that documents the use of U.S. or Chilean materials in the production of the article subject to the verification, such as purchase orders, invoices, bills of lading and other shipping documents, customs import and clearance documents, and bills of material and inventory records.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.471 Special rule for verifications in Chile of U.S. imports of textile and apparel products.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by The Committee for the Implementation of Textile Agreements (CITA), which may include suspending the application of preferential treatment to the textile or apparel good for which a claim of origin has been made. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good, if directed by CITA.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that a Chilean exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. CBP may undertake or assist in a verification under this paragraph by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by CITA, which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Chilean entity where the reasonable suspicion of unlawful activity relates to those goods. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to any textile or apparel goods exported or produced by the entity subject to the verification, if directed by CITA.

(c) *Assistance by CBP to Chilean authorities.* CBP may undertake or assist in a verification under this section by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States.

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Chile consistent with the laws, regulations, and procedures of Chile, will be considered confidential as provided for in Article 5.6 of the US-CFTA.

(e) *Notification to Chile*. Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Chile. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

(f) *Retention of authority by CBP.* If CBP requests a verification before Chile fully implements its obligations under Article 3.21 of the US-CFTA, the verification will be conducted principally by CBP, including through means described in paragraphs (a) and (b) of this section. CBP retains the authority to exercise its rights under paragraphs (a) and (b) of this section.

§ 10.472 Verification in the United States of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* CBP will endeavor, at the request of the government of Chile, to conduct a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, Chile may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of Chile.* CBP will endeavor to conduct a verification at the request of the government of Chile for purposes of enabling Chile to determine that the U.S. exporter or producer is complying with applicable customs laws, regulations, and procedures, if Chile has a reasonable suspicion that a U.S. exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, it may take action as permitted under its laws with respect to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Visits by CBP*. CBP may conduct visits to the premises of a U.S. exporter or producer or any other enterprise involved in the movement of textile or apparel goods from the United States to Chile in order to undertake or assist in a verification pursuant to paragraphs (a) and (b) of this section.

(d) *Initiation of verification by CBP*. CBP may conduct, on its own initiative, a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate.

(e) *Treatment of documents and information*. CBP will endeavor to provide to the government of Chile, consistent with U.S. laws, regulations, and procedures, production, trade, and transit documents and other information

necessary to conduct a verification under paragraphs (a) and (b) of this section. Such information will be considered confidential as provided for in Article 5.6 of the US-CFTA.

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this section, that the good which is the subject of the verification does not qualify as an originating good, it will issue a written determination that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in the ''Rules of Origin'' heading under this subpart, the legal basis for the determination; and,

(d) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination.

§ 10.474 Repeated false or unsupported preference claims.

Where CBP finds indications of a pattern of conduct by an importer of false or unsupported representations that a good imported into the United States qualifies as originating, CBP may deny subsequent claims for preferential tariff treatment on identical goods imported by that person until compliance with the rules applicable to originating goods as set forth in General Note 26, HTSUS is established to the satisfaction of CBP.

Penalties

§ 10.480 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the US-CFTA.

§ 10.481 Corrected declaration by importers.

A U.S. importer who makes a corrected declaration under § 10.410(b) will not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made.

§ 10.482 Corrected certifications of origin by exporters or producers.

Civil or administrative penalties provided for under the U.S. customs laws and regulations will not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 10.430(b) with respect to the making of an incorrect certification.

§ 10.483 Framework for correcting declarations and certifications.

(a) *''Voluntarily'' defined.* For purposes of this subpart, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(1) Done before the commencement of a formal investigation; or

(2) Done before any of the events specified in § 162.74(i) of this part have occurred; or

(3) Done within 30 calendar days after either the U.S. importer, exporter or producer had reason to believe that the declaration or certification was not correct; and is

(4) Accompanied by a written statement setting forth the information specified in paragraph (c) of this section; and

(5) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Cases involving fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect declaration or certification may not make a voluntary correction. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(c) *Written statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a written statement which:

(1) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(2) In the case of a corrected declaration, identifies each affected import transaction, including each port of importation and the approximate date of each importation, and in the case of a notification of an incorrect certification, identifies each affected exportation transaction, including each port of exportation and the approximate date of each exportation. A U.S. producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(3) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional pertinent information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Substantial compliance.* For purposes of this section, a person will be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (c) of this section, provided that:

(1) CBP is satisfied that the information was provided before the commencement of a formal investigation; and

(2) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration must tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and § 162.74 of this chapter.

Goods Returned After Repair or Alteration

§ 10.490 Goods re-entered after repair or alteration in Chile.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Chile as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Chile, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Chile, are incomplete for their intended use and for which the processing operation performed in Chile constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Chile after having been exported for repairs or alterations and which are claimed to be duty free.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 12. The general authority citation for part 24 is revised, and the specific authority for § 24.23 continues, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332

* * * * *

■ 13. Section 24.23 is amended by adding paragraphs (c)(6) and (c)(7) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(6) [Reserved]

(7) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Chile Free Trade Agreement Implementation Act (see also General Note 26, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 14. The authority citation for part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 15. Section 162.0 is amended by adding a sentence at the end to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement are contained in Part 10, Subpart H of this chapter.

PART 163—RECORDKEEPING

■ 16. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

■ 17. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(vi) as (a)(2)(vii) and adding a new paragraph (a)(2)(vi) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

* * * * *

■ 18. The Appendix to part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 10.410 US-CFTA Certification of origin and supporting records.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 19. The authority citation for part 178 continues to read as follows:

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

■ 20. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	*	*
§§ 10.410 and 10.411	Claim for preferential tariff treatment under the US-Chile Free Trade Agreement	1651–0117
*	*	*

PART 191—DRAWBACK

■ 21. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

■ 22. Section 191.0 is amended by adding a sentence at the end to read as follows:

§ 191.0 Scope.

* * * Those provisions relating to the United States-Chile Free Trade

Agreement are contained in subpart H of part 10 of this chapter.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: February 28, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–4156 Filed 3–4–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9189]

RIN 1545–BA22

Property Exempt From Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to property exempt from levy, which revise regulations currently published under Internal Revenue Code section 6334. The regulation reflects changes made by the IRS Restructuring and Reform Act of 1998 (the RRA 98) and provides guidance regarding: (1) Procedures for obtaining prior judicial approval of certain principal residence levies; (2) an exemption from levy for certain residences in small deficiency cases and for certain business assets in the absence of administrative approval or jeopardy; and (3) the applicable dollar amounts for certain exemptions. The regulation also reflects changes made by the Taxpayer Relief Act of 1997, which permits levy on certain specified payments with the prior approval of the Secretary.

DATES: *Effective Date:* These regulations are effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Robin Ferguson at (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains a final regulation amending the Procedure and Administration Regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code of 1986 (Code). The final regulation provides guidance reflecting the amendments to section 6334 made by RRA 98 (Public Law 105–206), and the Taxpayer Relief Act of 1997 (Public Law 105–34)(TRA 97). A notice of proposed rulemaking (REG–140378–01) was published in the **Federal Register** on August 19, 2003 (68 FR 49729). No written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, scheduled or held. This final regulation adopts the provisions of the notice of proposed rulemaking with no changes.

Comments on the Proposed Regulation

None.

Modifications of the Proposed Regulation

None.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of the final regulation is Robin Ferguson of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6334–1 is amended as follows:

■ 1. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), and (f) are revised.

■ 2. Paragraphs (g) and (h) are added.

The revisions and additions read as follows:

§ 301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $6,250 in value.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $3,125 in value.

* * * * *

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of that taxpayer's minor children, so much of that taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Service is not required to release a levy until such time as it is established that the amount to be released from levy actually will be applied in satisfaction of the support obligation. The Service may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period that shall be exempt from levy, for purposes of complying with a support obligation. If the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy, at the discretion of the Service, may be allocated entirely to one salary, wage or source of other income or be apportioned between the several salaries, wages, or other sources of income.

* * * * *

(13) *Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy*—(i) Residences in small deficiency cases. If the amount of the levy does not exceed $5,000, any real property used as a residence of the taxpayer or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(ii) *Principal residences and certain business assets.* Except to the extent