

Appendix A

Changes to the Pro Forma LGIP and LGIA

Large Generator Interconnection Procedures (LGIP)

Section 11.2	Since it may not have been clear from the correction that appeared in Order No. 2003-B, the fifth sentence should end as follows: ". . . pursuant to Section 13.5 within sixty (60) Calendar Days of tender of draft LGIA, it shall be deemed to have withdrawn its Interconnection Request."
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Large Generator Interconnection Agreement (LGIA)

Page 1, paragraph above the recitals	In the first sentence, insert a space between "Generator" and "Interconnection".
Article 5.3	In the third paragraph, last sentence, item number 3, change "interconnection Customer" to "Interconnection Customer."
Article 12.4	In the last sentence, the reference to 18 CFR § 35.19a(a)(2)(ii) should be changed to 18 CFR § 35.19a(a)(2)(iii)
Article 18.3.6	In the first sentence, change ". . . policy had been issues to each . . ." to ". . . policy had been issued to each . . ."
Article 19.1	Second sentence, change ". . . exercise of the secured Party's . . ." to ". . . exercise of the secured party's . . ."
Article 24.2	In the last sentence, item number 2, delete extraneous quotation mark.

Nora Mead BROWNELL, Commissioner
dissenting in part:

For the reasons I articulated in my partial dissent to Order No. 2003-B, I would have granted rehearing and reinstated the original provision in Order No. 2003 that ensured Interconnection Customers full reimbursement of their up-front funding of Network Upgrades within five years. Therefore, I dissent from this portion of today's order.

Nora Mead Brownell
[FR Doc. 05-12870 Filed 6-29-05; 8:45 am]
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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 181

[CBP Dec. 05-24]

RIN 1505-AB41

Tariff Treatment Related to Disassembly Operations Under the North American Free Trade Agreement

AGENCY: Customs and Border Protection,
Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs and Border Protection ("CBP") Regulations concerning the North American Free Trade Agreement ("the NAFTA"). The regulatory changes interpret the term "production" to include disassembly and clarify that components recovered from the disassembly of used goods in a NAFTA country are entitled to NAFTA originating status when imported into the United States provided that the recovered components satisfy the applicable NAFTA rule of origin requirements.

DATES: Effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT:
Shari Suzuki, International Agreements Staff, Office of Regulations and Rulings, (202) 572-8818.

SUPPLEMENTARY INFORMATION:**Background***Statutory and Regulatory Background*

On December 17, 1992, the United States, Canada, and Mexico (the parties) entered into an agreement, the North American Free Trade Agreement (the NAFTA). The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993).

Under NAFTA Article 401(b) and 19 U.S.C. 3332(a)(1)(B)(i), a good originates in the territory of a party where each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 of the NAFTA as a result of production occurring entirely in the territory of one or more of the parties. These change in tariff classification rules are set forth in General Note 12(t) of the Harmonized Tariff Schedule of the United States ("HTSUS") (hereinafter "the Annex 401 rules"). It is therefore understood that unless a change in tariff classification results from an activity that qualifies as "production," the mere fact that there is a prescribed change in tariff classification will not be considered as meeting a rule of origin.

The NAFTA does not explicitly address the question of whether disassembly occurring in a NAFTA country may be considered NAFTA origin-conferring "production" when the recovery of components by the disassembly operation satisfies the applicable rules of origin listed in Annex 401 of the NAFTA.

Publication of Proposed Regulatory Changes

On March 13, 2003, the U.S. Customs Service (now Customs and Border Protection ("CBP")) published in the **Federal Register** (68 FR 12011) a notice of proposed rulemaking ("NPRM") setting forth proposed amendments to Part 181 to add a new § 181.132 to the CBP Regulations (19 CFR 181.132). The proposed rule stated that components which were recovered from the disassembly of used goods in a NAFTA country would be entitled to NAFTA originating status upon importation into the United States, provided that: (1) The recovered components satisfy the applicable NAFTA rule of origin requirements in Annex 401, and (2) if the rule of origin in Annex 401 applicable to the components does not include a regional value content requirement, the components are subject

to further processing in the NAFTA country beyond certain specified minor operations.

The NPRM explained the need for a regulation to address disassembly in order to: (1) Provide an appropriate regulatory basis for the treatment of recycled or remanufactured goods under the NAFTA; (2) provide guidance regarding the meaning of the statutory term "production;" and (3) clarify the relationship between the Annex 401 rules of origin and the disassembly of goods. In addition, the NPRM noted that allowing the disassembly of used goods to confer origin under certain circumstances would promote recycling and re-manufacturing in North America and, therefore, would advance the economic and environmental objectives of the NAFTA.

The NPRM prescribed a 60-day period for the submission of public comments on the proposed regulatory changes. A total of 10 commenters responded. Nine comments focused on the proposed text while one comment concerned CBP's certification under the Regulatory Flexibility Act of 1980.

A majority of the comments received by CBP supported the proposed amendment which would allow components that are recovered from the disassembly of a used good in a NAFTA country to be entitled to NAFTA originating status upon importation into the United States. Most commenters agreed with CBP that interpreting "production" to include disassembly would promote recycling and re-manufacturing in North America.

However, all of the comments suggested changes regarding the approach set forth in the NPRM. Most commenters expressed the opinion that, while the proposed amendment was well intended, it would not completely remedy the situation and, in some cases, would restrict the ability of remanufactured goods to qualify for preferential treatment under NAFTA. Many commenters objected to the addition of a further processing requirement in cases where the applicable rule of origin did not include a regional value content requirement. Several commenters identified practical problems in administering the proposed regulation, including inconsistencies with commercial and accounting practices. Lastly, many commenters maintained that the proposed regulation was too complicated.

Discussion of Comments

Of the 10 commenters who responded to the solicitation of comments on the proposed Part 181 changes, 9 provided one or more specific comments on the

proposed § 181.132 text. The comments are discussed below.

Comment: Four commenters expressed concern with the unilateral approach being pursued by the U.S. Government in regard to the proposed amendment. The commenters stated that the adoption of an amendment solely within the territory of the United States would give rise to uncertainty within the trading community and result in inconsistent application of the rules of origin between the NAFTA parties. These commenters indicated their preference for the development of a trilateral approach.

CBP's Response: A trilateral approach remains under discussion in the NAFTA working group. While there appears to be agreement in principle, the trilateral text is still being developed. In the meantime, this interpretive regulatory guidance is needed to aid U.S. importers in exercising reasonable care.

Comment: Four commenters suggested adopting an approach similar to that taken by the U.S. Administration in several recent free trade agreements. Under this approach, "goods wholly obtained or produced entirely" in the territories of the parties are considered to be originating. "Recovered goods" are specifically included in the definition of "goods wholly obtained or produced entirely" in the territories of the parties. Thus, "recovered goods" are considered to be originating goods. The commenters stated that the same result could be achieved by clarifying the NAFTA definition of "goods wholly obtained or produced" under the NAFTA Uniform Regulations. According to these commenters, this approach recognizes disassembly as conferring origin without the technical and cumbersome requirement of establishing that disassembly operations satisfy the product-specific rules of origin.

Two commenters supported adopting the provision for "recovered goods" in the definition of "goods wholly obtained or produced entirely." One commenter proposed that a new item covering "materials recovered by means of disassembly" be included in the definition of "goods wholly obtained or produced entirely." Another commenter recommended amending the existing provision for waste and scrap, which exists under the definition of "goods wholly obtained or produced entirely," to provide for recovered goods.

CBP's Response: CBP agrees that the approach taken by the United States in several recent free trade agreements is administrable. However, amending the definition of "goods wholly obtained or produced" in NAFTA cannot be achieved merely by amending the

definition found in the regulations. The definition of "goods wholly obtained or produced" is found in Article 401 of the NAFTA and any change would require an amendment to the agreement and implementing legislation.

Comment: One comment emphasized the importance of consistency. This commenter stated that there should be as much consistency as possible among the various agreements to which the United States is a party.

CBP's Response: While agreeing that consistency of rules under various free trade agreements is desirable, CBP's responsibility is to implement agreements as negotiated and implemented in U.S. law.

Comment: Several commenters maintained that the fundamental basis on which the Annex 401 rules were negotiated presumed the manufacture or assembly of a good from its constituent parts. Thus, the commenters believed that interpreting the term "production" to include disassembly is not sustainable when interpreted in context and in light of the objectives and purpose of the agreement.

CBP's Response: As indicated in the NPRM, CBP finds no evidence showing that the NAFTA intended not to treat "disassembly" as a production process. The term "production" includes a broad range of economic activity. Moreover, the goals of the NAFTA include elimination of barriers to trade, facilitation of cross-border movement of goods, promotion of economic activity in North America, and protection of the environment. Thus, it is consistent with the free trade purposes of NAFTA to treat the recovery of goods by disassembly as "production" under the NAFTA rules of origin.

Comment: Two commenters expressed a desire for an approach that would confer originating status on goods recovered from disassembly operations in a manner that applies equally to all manufacturers across industry sectors. These commenters note that differences in the structure of the Harmonized System may result in lack of uniformity of application across industry sectors.

CBP's Response: CBP notes that any lack of uniformity in the treatment of recovered components will parallel the effect of the applicable NAFTA rules of origin on other types of "production." Application of Annex 401 does result in lack of uniformity of application across industry sectors. The results depend on both the structure of the Harmonized System and the product-specific rules in Annex 401 which were negotiated in the context of trade policy goals, which may differ between sectors. There is no

uniform level of processing across sectors in the rules.

CBP notes that in many cases where a heading change rule cannot be met, an alternative rule of origin allows a change within the heading provided a regional value content requirement is met. CBP also notes that Article 401(d) provides a special rule for goods and parts that are classified in the same heading or subheading where there can be no change in tariff classification. CBP believes that the fact that some recovered goods will meet a tariff shift requirement while others will not is an insufficient reason to abandon the proposed regulation altogether (as this result will comport with the NAFTA rules of origin themselves).

Comment: Six commenters were opposed to the imposition of additional processing requirements for recovered components that meet the tariff shift rule under Annex 401. The proposed regulation specified that recovered components that met a tariff shift rule, but were not subject to a regional value content (RVC) requirement, had to be further processed beyond certain minor operations.

The commenters argued that the effect of this requirement is that recovered components that would otherwise qualify for the NAFTA preference would not qualify unless they had been subjected to additional processing. Additionally, these commenters stated that this "advanced-in-value" requirement effectively makes the origin requirements applicable to goods derived from disassembly operations stricter than those applicable to other goods, which need only satisfy the Annex 401 requirements. They believe that requiring goods derived from disassembly operations to satisfy both the Annex 401 rule of origin and the additional processing requirements imposes a double burden on remanufacturers that undermines the goals of the rule.

Two commenters stated that the additional processing requirement is unnecessary because the Annex 401 rules of origin, which were negotiated and agreed to by all three countries, already define the degree of production that will confer origin on non-originating materials. In some cases, that degree of production would involve a tariff shift, in others a regional value content requirement, and in still others a combination of both. However, the commenters argued that, in all cases, the degree of production established by the Annex 401 rules of origin would be sufficient to address when disassembly results in an originating good.

One commenter believed that disassembly is merely the inverse of assembly. Therefore, if the applicable Annex 401 rule of origin provides that origin is conferred by a simple tariff shift that may be achieved through assembly, achieving that same tariff shift through disassembly should also confer origin.

Another commenter argued that while the assembly process is predictable and quantifiable because every part entering the production line is the same, each disassembly is unique due to the condition of the used good, and that disassembly may be far more difficult than simple assembly with clean new parts. Thus, the proposed rule does not recognize the complexity and difficulty of disassembly and ignores the substantial effort necessary to recover parts from used equipment.

Several commenters objected to the proposed rule because some recovered components are not subject to operations other than those enumerated as minor operations in the proposed rule. Two commenters stated that there is little in the remanufacturing process that cannot be categorized within the list of minor operations. One commenter stated that the remanufacturing process consists of all the listed processes linked together. Thus, the commenters believed that the additional requirements would preclude the remanufacturing process from conferring originating status on recovered components.

One commenter believed that the additional processing requirement would increase the complexity of NAFTA compliance systems because it may be necessary to record the processing performed on individual recovered components. The commenter stated that this would create a de facto direct identification requirement which may be impractical or impossible to implement and very difficult to audit.

CBP's Response: CBP agrees that the Annex 401 rules define the degree of production required for conferring origin and has deleted the additional processing requirements.

Comment: Several commenters objected to the application of the Annex 401 rules of origin. They claimed that subjecting recovered components and remanufactured goods to the same NAFTA rules as items produced entirely from new components makes it extremely difficult to qualify remanufactured goods as originating goods under the NAFTA.

The commenters argued that, in many cases, NAFTA certificates are not available for recovered components and, therefore, they must be deemed non-

originating. Furthermore, when applying the Annex 401 rules to the remanufactured good, the recovered component often fails to satisfy the required tariff shift because it is generally classified in the same tariff provision as the remanufactured good. These commenters also contended that if the remanufactured good is subject to an RVC rule, the good will fail to meet the rule because the recovered component often represents the majority of the value or net cost of the remanufactured good. In this situation, the RVC cannot be met because the recovered component is deemed to be non-originating.

CBP's Response: The situation the commenters describe is one of the reasons that more recent free trade agreements take a different approach to recycled and recovered goods, but the issue here is how to interpret NAFTA, and solutions are limited by the NAFTA text. The feasibility of determining the cost or value of a recovered component will be discussed later in this document.

Comment: Four commenters expressed the view that the proposed rule should be a simple rule that treats all materials yielded from disassembly in a NAFTA country as originating materials. These commenters stated that the removal of a worn component should be an origin-conferring process. This would ensure that the value of the recovered component, including the very substantial content resulting from the labor involved in the removal, will be included in the value of originating materials when determining whether the remanufactured good qualifies as an originating good. By considering the removal of worn parts to be origin conferring, the commenters stated that it would be possible to count that valuable operation towards qualifying the remanufactured good as an originating good.

These commenters contended that the above "simple" rule could be administered more easily than CBP's proposed rule which they characterized as highly complex and difficult, if not impossible, to administer. With respect to CBP's concern regarding sufficient processing, the commenters suggested that CBP could condition this rule by providing that goods yielded from a "minor disassembly" would not be treated as NAFTA originating. They suggested that disassembly of an article into five (or ten) or fewer components by processes such as removing screws, bolts, pins or other fasteners could be treated as a "minor disassembly" operation. Moreover, certain minor operations, such as separating a good and its component by disconnecting

cables or by unsnapping could be ruled not to constitute disassembly. Thus, these commenters proposed a rule that treats all components yielded from disassembly as NAFTA originating, subject to a simple disassembly exception. The commenters claimed that their proposal would meet the goals of NAFTA while avoiding administrative problems.

Several remanufacturers expressed dissatisfaction with the proposed regulation for the reason that their recovered parts would never qualify under the proposed rule since the parts would not satisfy the required tariff shift and also would not meet the RVC requirement based only on labor costs. These commenters support a simple disassembly rule under which recovered parts would qualify as originating. If the recovered parts were considered originating, they could meet the RVC requirement associated with the rule for the remanufactured good. This approach would allow the recovered parts to qualify as an originating material but would still require the producer of the remanufactured good to meet the NAFTA Annex 401 rule of origin applicable to the remanufactured good.

CBP's Response: Although CBP understands the appeal of a "simple" disassembly rule, CBP cannot adopt such an approach because it conflicts with the Annex 401 rules of origin. CBP cannot disregard the rules of origin that already exist for specific products; the Annex 401 rules of origin set the minimum threshold that must be met in order to confer originating status to a good.

The commenters would prefer to have a new rule that allows mere disassembly to confer origin without having to meet any tariff shift or regional value content requirements. CBP does not have the authority to change the Annex 401 rules of origin. The only question addressed in this interpretive regulation is whether the NAFTA definition of production can be interpreted to include disassembly. CBP is not adopting a new rule of origin.

Comment: One commenter maintained that all goods which are subject to additional processing should be treated as originating goods without regard to whether the good meets the Annex 401 rules. This commenter stated that if CBP must require that goods be advanced in value or improved in condition, then all goods that satisfy the additional processing requirements should be considered originating, regardless of whether they satisfy the specific rule of origin under Annex 401. The commenter recommended a new rule in which the Annex 401 rules are overridden. A component recovered

from a good disassembled in the territory of a party would be considered to be originating as a result of such disassembly provided that the recovered component is advanced in value or improved in condition by means of additional processing other than certain listed minor processes.

CBP's Response: CBP disagrees. The Annex 401 rules of origin set forth the minimum level of processing required and cannot be disregarded.

Comment: One commenter expressed concern with how CBP will interpret a required change in tariff classification. The commenter provided an example involving a cover from the document feeder portion of a laser printer. The commenter asked whether CBP would focus on the laser printer or the document feeder for the purpose of determining whether the cover met a required change in tariff classification. The cover meets the tariff shift requirement when the laser printer is viewed as the non-originating material. However, the cover does not meet the tariff shift requirement when the document feeder is viewed as the non-originating material.

CBP's Response: CBP assumes that, in the example provided by the commenter, the remanufacturer disassembled the laser printer into various parts, including the document feeder, and then disassembled the document feeder into its constituent parts, including the cover. Under the principles of self-produced materials contained in part II, section 4(8) of the appendix to part 181 of the CBP Regulations (19 CFR part 181, appendix), the producer should be able to designate the laser printer as the non-originating material for the purpose of determining whether the non-originating materials underwent the applicable change in tariff classification.

Comment: One commenter suggested that remanufactured goods should be considered to be originating goods and provided a precise definition of remanufactured goods. In order to qualify as an originating good, the product must: (1) Be dismantled; (2) have all parts cleaned, inspected and returned to sound working condition; and (3) be reconstructed to sound working condition. In addition to this definition, the commenter recommended a rule which requires that the components undergo processing that restores their functionality and fit; the components be re-assembled back into an item that is the equivalent of the item disassembled; all "new" parts used in the remanufacturing process satisfy the traditional specific rules of origin for the finished item; and the originating value

of the recovered parts be some derivation of the core charge value if a core charge applies. The commenter believes that this definition would eliminate the possibility of disassembly operations being used as a method of circumvention because there must be complete reassembly.

This commenter also proposed, with respect to country of origin marking, that all remanufactured parts be labeled "Remanufactured in (named country)," and that the country of origin of the used items imported into a territory and used in the remanufacturing process be the country in which the parts expired, regardless of marking.

CBP's Response: The Annex 401 rules of origin cannot be disregarded. The regulation under consideration addresses the issue of whether goods that are the result of disassembly are considered to have undergone "production" for purposes of determining whether the good qualifies as an originating good under the NAFTA. The regulation does not address country of origin for marking purposes. Country of origin for NAFTA marking purposes is governed by part 102 of the CBP Regulations (19 CFR part 102). CBP notes Headquarters Ruling Letters 561209, dated May 4, 1999, and 561854, dated December 15, 2000, which address the country of origin marking of rebuilt automotive parts.

Comment: One commenter suggested that, if the restrictions on "minor operations" are included in the final regulation, "precision machining" should be defined as "machining performed on a numerically controlled mill, lathe or similar equipment."

CBP's Response: As noted above, CBP has decided to delete the portion of the proposed regulation that refers to minor operations.

Comment: Two commenters stated that it is unlikely that a new non-originating good would be disassembled in one party's territory and shipped to another party where it would be reassembled. According to these commenters, the importer would have to pay duties, fees and brokerage charges on the initial importation into the party where the goods would be disassembled; incur the cost of setting up a disassembly operation; pay the overhead costs and costs to employ workers; pay additional transportation and handling costs; pay broker charges on the subsequent importation into the territory of the other party where the "recovered goods" would be reassembled; and pay all the same costs noted previously for the subsequent reassembly in the territory of the other party. Thus, these commenters believe it

is highly unlikely that the duty savings would be substantial enough to make such operations feasible from a cost/benefit standpoint.

One commenter suggested excluding high duty rate goods from the disassembly rule but acknowledged that most high duty rate goods (textiles, footwear, chemicals, agricultural products, etc.) do not easily lend themselves to disassembly.

Another commenter stated that precluding application of the proposed rule to new products adequately deals with possible abuses of disassembly to confer origin.

CBP's Response: CBP specifically requested comments on the view that an applicable value-content rule or alternative rule would be sufficient to permit the disassembly of new goods to be considered "production." None of the comments received endorsed this view. Accordingly, the final rule continues to reflect the portion of the proposed rule that precludes application of the regulation to new goods.

Article 412 of NAFTA and section 17 of the appendix to 19 CFR part 181 contain a very broad anti-circumvention provision which states that a good will not be considered to be an originating good if the object of the production can be shown by a preponderance of the evidence to have been to circumvent the rules of origin. CBP believes that a change in tariff classification resulting from the disassembly of new, non-originating goods should not make the resulting goods eligible for originating status. Generally, a "new" good is a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

Accordingly, § 181.132(b) in this final rule document provides that the disassembly of new goods will not be considered "production" for the purposes of NAFTA Article 415 and the NAFTA rules of origin. To clarify the meaning of the term "new goods," CBP also has included in § 181.132(b) the definition set forth above for this term.

Comment: One commenter pointed out an error in proposed § 181.132(c). The reference to "Schedule V" should be "Part V." However, the commenter believes that a reference to automotive goods is unnecessary because remanufactured goods are not used as original equipment in the production of motor vehicles. Thus, they do not fall within the definition of "light duty automotive good" or "heavy-duty automotive good" and would not be subject to tracing requirements.

CBP's Response: CBP agrees that the reference in proposed § 181.132(c) should have been to "Part V." CBP takes note of the commenter's statement that remanufactured goods are not used as original equipment in the production of motor vehicles. Upon further reflection, CBP has decided to delete paragraph (c) because it is unnecessary.

Comment: The Office of Advocacy of the U.S. Small Business Administration (SBA) expressed concern that the proposed rule's certification pursuant to the Regulatory Flexibility Act was deficient. CBP certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, the SBA is concerned that there is no information on the number of small entities that would be impacted by this rule or the magnitude of the impact. Based on discussions with small entities in the automotive recycling business, the SBA recommended that CBP revisit its certification and at a minimum provide a factual basis for certification. The SBA stated that CBP must show which small entities will be affected and whether those affected constitute a substantial number within the regulatory industry.

CBP's Response: In the NPRM, CBP certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, upon reconsideration, CBP believes that the proposed rule should have stated that the Regulatory Flexibility Act is not applicable to this rule because the rule is exempt from notice and comment procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553). First, this is an interpretive rule that is exempt from notice and public procedure pursuant 5 U.S.C. 553(b)(A). Second, this rule involves a foreign affairs function of the United States because it implements an international trade agreement. A notice of proposed rulemaking is not required for such rules pursuant to 5 U.S.C. 553(a)(1). Accordingly, because the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) applies to a rule only when an agency is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking, this rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Even if the Regulatory Flexibility Act applied to this rule, CBP would again certify that this final rule does not have a significant economic impact on a substantial number of small entities. The rule has only a positive economic impact on small (or other) entities

regulated by the rule. The rule regulates only U.S. importers of components of used goods that were recycled or remanufactured in Canada or Mexico, and, rather than increasing the economic burdens on these importers, the rule provides these importers with customs duty relief.

Comment: Four commenters expressed opposition to requiring a RVC calculation for recovered components because it is claimed either that there is no clear method for valuing individual components or that their value is not readily ascertainable. Most commenters stated that they did not know how to value the components removed from used goods. They requested that the rules clarify how the value and origin of individual used components are to be established. The commenters claimed that identifying the cost of each individual recovered component from the cost of the used good would not be feasible. While there may be an ascertainable value for the used good, there is not necessarily a purchase price or individualized value for the components included inside it. Additionally, the commenters claimed that it is not clear whether the value of the used component or the used good is to be included in the value of non-originating materials.

CBP's Response: CBP agrees that applying the value-content requirement to the disassembly process raises certain questions. However, the value-content requirement exists as part of the Annex 401 rule and cannot be disregarded.

CBP recognizes that if more than one component is recovered from the used good, the value of the used good should be allocated over the disassembled components. Additionally, the cost of the disassembly would have to be spread over all of the constituent disassembled components and then reallocated and added to the cost of each of those components. CBP notes that it has previously ruled that the scrap value of the parts and components that cannot be reused may be deducted from the value of the non-originating materials. See Headquarters Ruling Letter 547088, dated August 29, 2002. Remanufacturers may have internal bookkeeping records that would aid in valuing such components. CBP acknowledges that trade in remanufactured goods already exists and is inclined to consider reasonable accounting methods that have been used consistently in the trade.

Comment: Many commenters began their analysis by attempting to determine whether the used good was an originating good. They stated that it was highly unlikely that a NAFTA

certificate of origin could be provided for the used good since the good would probably be several years old and pertinent records would no longer be available.

CBP's Response: CBP agrees. It is likely that the used good will be assumed to be non-originating. However, the new regulation allows the component recovered from the used good to qualify as an originating good. If the recovered component meets the Annex 401 rule applicable to that component, the recovered component will be considered to be an originating good (or material).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments regarding disassembly should be adopted as a final rule with the following changes:

1. The additional processing requirements set forth in paragraph (a)(2) of proposed § 181.132 have been deleted for the reasons explained in the analysis of comments.

2. Paragraph (c) of the proposed regulation has been deleted because, as explained further in the analysis of comments, the reference to automotive goods in this provision is unnecessary.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Because this rule interprets and implements the obligations of the United States under the NAFTA, a notice of proposed rulemaking was not required pursuant to 5 U.S.C. 553(a)(1) and (b)(A). Accordingly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable to this rule.

Drafting Information

The principal author of this document was Shari Suzuki, Office of Regulations and Ruling, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

Signing Authority

This document is being issued by CBP 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 his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Trade agreements (North American Free Trade Agreement).

Amendments to the Regulations

■ Accordingly, for the reasons stated above, part 181 of the CBP Regulations (19 CFR part 181) is amended as set forth below.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 1. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

■ 2. Subpart L of part 181 is amended by adding a new § 181.132 to read as follows:

§ 181.132 Disassembly.

(a) *Treated as production.* For purposes of implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA, except as provided in paragraph (b) of this section, disassembly is considered to be production, and a component recovered from a good disassembled in the territory of a Party will be considered to be originating as the result of such disassembly provided that the recovered component satisfies all applicable requirements of Annex 401 and this part.

(b) *Exception; new goods.* Disassembly, as provided in paragraph (a) of this section, will not be considered production in the case of components that are recovered from new goods. For purposes of this paragraph, a "new good" means a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: June 27, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.
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