DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

[T.D. 95–68]

RIN 1515–AB33

North American Free Trade Agreement

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the Customs Regulations which were published in the **Federal Register** on December 30, 1993, as T.D. 94–1 to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement entered into by the United States, Canada and Mexico.

EFFECTIVE DATE: October 1, 1995.

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SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico (the ''Parties'') entered into an agreement, the North American Free Trade Agreement (NAFTA). The stated objectives of the NAFTA are to: 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; increase substantially 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 NAFTA, for its joint administration and for the resolution of disputes; and establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of 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 (the ''Act''), Pub. L. 103–182, 107 Stat. 2057.

The principal role of the U.S. Customs Service is to administer the provisions of the NAFTA and the Act which relate to the importation of goods into the United States from Canada and Mexico. Those Customs-related NAFTA 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 Chapter Five (Customs Procedures).

The tariff-related provisions within NAFTA Chapter Three which require regulatory action by Customs are Article 303 (Restriction on Drawback and Duty Deferral Programs), Article 305 (Temporary Admission of Goods), Article 306 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and Article 307 (Goods Re-Entered after Repair or Alteration). The non-tariff provisions of Chapter Three requiring Customs regulatory action are Article 310 (Customs User Fees), Article 311 (Country of Origin Marking) and Annex 300–B (Textile and Apparel Goods).

Chapter Four of the NAFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States, Canada or Mexico (NAFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 302(2) and Annex 302.2 of the NAFTA. Under Article 401 within that Chapter, originating goods may be grouped in two broad categories: (1) Goods which are wholly obtained or produced entirely in one or more NAFTA countries; and (2) goods which are produced entirely in one or more NAFTA countries exclusively from materials that originate in those countries, or goods which are produced entirely in those countries and which satisfy the specific rules of origin in NAFTA Annex 401 (change in tariff classification requirement and/or regional value-content requirement). Article 402 sets forth the methods for calculating the regional value content of a good and the rules for determining the value of materials used in the production of a good. Article 403 sets forth special rules for calculating the regional value content in the case of automotive goods. Article 404 provides for accumulation of production by two or more producers. Article 405 provides a de minimis criterion. The remaining Articles within 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.

Chapter Five sets forth the procedural and other customs requirements which apply under the NAFTA, in particular with regard to claims for preferential tariff treatment. Articles 501–506 of this Chapter provide for use of a Certificate of Origin for purposes of certifying that an exported good qualifies as an originating good under the Chapter Four origin rules, set forth the rights and obligations of importers regarding imported goods and of exporters and producers regarding exported goods, and set forth the rights and obligations of the customs administration of the importing country when conducting a verification of the origin of a good and when denying a claim for preferential tariff treatment. Article 507 sets forth confidentiality principles regarding business information collected pursuant to Chapter Five. Article 508 requires each Party to maintain penalties for violations of its laws and regulations relating to Chapter Five. Article 509 sets forth the obligations for the issuance and application of advance rulings by the customs administration of the importing country regarding whether a good meets the country of origin marking requirements of Article 311 or the origin rules of Chapter Four or other NAFTA requirements that apply to certain goods at the time of importation. Article 510 extends to exporters and producers of goods substantially the same rights of review and appeal accorded to importers regarding advance rulings or marking determinations of origin or country of origin determinations for purposes of preferential tariff treatment. Article 511 requires the Parties to establish, and implement through their respective laws or regulations, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, Chapter Five and any other matter as agreed by the Parties. Finally, Articles 512 and 513 set forth procedures for cooperation between the Parties regarding the implementation and administration of the customs-related aspects of the NAFTA.

Pursuant to Article 511 of the NAFTA, representatives of the Parties engaged in a series of trilateral discussions for the purpose of formulating uniform regulatory texts or principles in respect of Chapters Four and Five and in respect of certain provisions within Chapter Three. As regards Chapter Three, agreement was reached on certain principles to be applied for purposes of implementing

the drawback provisions of Article 303. With regard to the remaining Chapter Three provisions, including the country of origin marking provisions of Article 311 and its companion Annex 311 (which provide for the establishment of ''Marking Rules'' for purposes of determining whether a good constitutes, and thus may be marked as, a good of a Party and which set forth disciplines on the methods and procedures for the country of origin marking of goods), those provisions were to be implemented by each Party independently and as appropriate within each Party's statutory and regulatory structure; the U.S. Marking Rules, contained in Part 102 of the Customs Regulations, were adopted on an interim basis in T.D. 94–4 which was published in the **Federal Register** on January 3, 1994 (59 FR 110). As concerns Chapter Four, the Parties agreed, by an exchange of letters dated December 30, 1993, to implement substantively verbatim texts of interim regulations covering all of the provisions of that Chapter. Finally, in recognition of the different existing customs legal and procedural requirements in the three countries, in the case of Chapter Five and some provisions of Chapter Three the Parties agreed, by an exchange of letters dated December 30, 1993, to use a standards approach whereby agreement was reached on certain minimum principles to be reflected in each Party's regulations, with each Party being left free to implement those principles, and any other requirements not inconsistent therewith, in accordance with the needs of the Party's particular statutory and regulatory framework. The trilaterally-agreed standards are set forth in a document entitled ''Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement''; the text of that standards document is reproduced for the information of the public in a general notice also appearing in this issue of the **Federal Register**.

On December 30, 1993, Customs published T.D. 94–1 in the **Federal Register** (58 FR 69460) setting forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the NAFTA in accordance with the implementation principles agreed to by the Parties as discussed above. In order to provide transparency and facilitate their use, the majority of the NAFTA implementing regulations set forth in T.D. 94–1 were included within one new Part 181. However, in those cases in which NAFTA implementation was more appropriate in the context of an existing regulatory provision, the NAFTA regulatory text was incorporated in an existing Part within the Customs Regulations. T.D. 94–1 also set forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the NAFTA implementing regulations. Although the interim regulatory amendments were promulgated pursuant to the foreign affairs function exception to the general notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 and took effect on January 1, 1994, in order to coincide with the entry into force of the NAFTA, T.D. 94–1 nevertheless provided for the submission of public comments thereon which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on March 30, 1994. In addition, two correction documents pertaining to T.D. 94–1 were published in the **Federal Register**, one on February 24, 1994 (59 FR 8852) and the other on March 31, 1994 (59 FR 15047).

Discussion of Comments

A total of 15 commenters responded to the solicitation of comments on the interim regulations set forth in T.D. 94–1. The comments submitted, and the Customs responses thereto, are set forth below.

Part 12, § 12.132 (Textile and Apparel Goods Under the NAFTA)

Comment: One commenter noted that whereas paragraph (b) of this section provides only for preparation of the country of origin declaration by the manufacturer or producer of the textile or apparel goods, in the case of non-NAFTA goods the declaration may also be prepared by the exporter or importer under § 12.130(f). Since the NAFTA provision imposes a more strict requirement, this commenter suggested that the NAFTA text be aligned on § 12.130(f) so as to provide for preparation by the manufacturer, producer, exporter or importer.

Customs response: The U.S. importer should not be allowed to prepare the declaration in this context because the importer often lacks sufficient knowledge of the actual production and origin of the goods. However, when the importer cannot obtain a declaration from the manufacturer or producer, Customs would be willing to accept a declaration prepared by the exporter, and paragraph (b) (redesignated in this document as paragraph (a)(2) as explained below) has been modified accordingly.

Part 134, § 134.22 (General Rules for Marking of Containers or Holders)

Comment: One commenter expressed approval of the approach taken in new § 134.22(d) regarding the country of origin marking of usual containers, in particular with reference to paragraph (d)(2) which, in the case of a good of a NAFTA country, removes from consideration the additional issue of whether a particular container is capable of reuse in determining whether a container must be marked. Notwithstanding the fact that this NAFTA rule was specifically intended to implement Annex 311(7) of the NAFTA, this commenter stated that this approach should not be limited to NAFTA goods but rather should be applied universally. In support of this suggestion the commenter argued that: (1) The standards applicable to usual containers are regulatory rather than specifically required by the marking statute (19 U.S.C. 1304) and thus can be changed; (2) the NAFTA does not require that its provisions be limited to NAFTA trade; and (3) no public policy purpose is served by having different usual container marking rules because they create confusion for importers and may mislead the consumer regarding the origin of the product packaged in the container when it has a different marking than that of the container.

Customs response: The definition of ''usual container'' provided in § 134.22(d)(1) applies to all containers, whether they are goods of a non-NAFTA country or goods of a NAFTA country. However, different regulatory requirements are provided in Part 134 of the Customs Regulations for determining whether a usual container is excepted from country of origin marking.

Section 304(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), states in part that:

> . . . Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

Thus, although a container may not be a good of a NAFTA country, if it is a ''usual container'' as defined in § 134.22(d)(1) of the Customs Regulations it may be excepted from marking pursuant to 19 U.S.C. 1304(b) provided that the conditions of that statutory provision are satisfied, as

Customs has ruled in HQ 735548 dated February 14, 1995.

The Part 134 regulations relating to marking of containers from non-NAFTA countries (§§ 134.23 and 134.24) generally draw a distinction between reusable and disposable containers in determining whether they must be marked to indicate their own country of origin. If the containers are determined to be reusable, they are treated as separate articles of commerce and are required to be individually marked with their country of origin. However, if the containers are determined to be disposable, they are not treated as separate articles of commerce and are excepted from country of origin marking.

However, for containers which are determined to be ''goods of a NAFTA country'', the distinction between reusable and disposable is not applicable in determining the marking requirements for the containers. The country of origin marking requirements for containers which are ''goods of a NAFTA country'' are based primarily on whether the container is considered to be a ''usual container''. If it is determined to be a ''usual container'', as defined in § 134.22(d)(1) of the regulations, the container is not required to be marked with its own origin. The fact that a container is capable of repeated use does not preclude it from being considered a ''usual container''.

Section 134.22(d) was included in the interim regulations solely to implement Annex 311(7) of the NAFTA, which applies to containers which are goods of NAFTA countries. Customs does not believe that the NAFTA implementing regulations are the proper vehicle for effecting a change in the marking requirements for containers which are goods of non-NAFTA countries. Such a change (applying to imports from non-NAFTA countries the § 134.22(d)(2) NAFTA ''usual container'' marking exception) should be the subject of a separate notice of proposed rulemaking to amend §§ 134.23 and 134.24, so as to give affected parties an opportunity to submit any comments they may have.

Part 181, Subpart B (Export Requirements)

Section 181.11

Comment: With regard to the preparation and use of Certificates of Origin in general, one commenter noted that the instructions for field 6 (Harmonized System tariff classification number) specify use of the 8-digit number of the country into which the good is imported if the good is subject to a specific rule of origin that requires eight digits. This commenter suggested that this creates an unnecessary burden on exporters because it requires them to cross-reference and cross-document the seventh and eighth digits of tariff numbers for each NAFTA country and may mean in some cases that three separate Certificates would have to be prepared for one part number. Since the tariff numbers in field 6 simply identify the rule of origin that the exporter used to certify the goods and because the seventh and eighth digits in all three countries identify the same goods and the same rule of origin, this commenter suggested the following alternative solutions: (1) The three governments could publish a single conversion list of the tariff numbers for each country for distribution to customs officials and the public; or (2) the exporter could be allowed to indicate with a ''U'', ''C'' or ''M'' prefix the country of the tariff number used in field 6.

Customs response: Customs does not agree with the proposal of allowing classification to be reported at the 6-digit level. Many of the specific rules of origin were written at the 7th and 8th digit level to capture a desired processing condition. Where this is the case, a NAFTA claimant must indicate that the processing it performed accomplished the required tariff shift. Reporting a classification number at a lesser level would not satisfy this requirement.

The proposal for publishing a list of all of the rules together with references to the 8-digit item numbers may have some merit. It should be noted that the tariff items in these rules are reflected either in the rules themselves or in the Appendix to Annex 401 of the NAFTA. Currently, the NAFTA Parties are exploring within the trilateral working groups created under the NAFTA the most appropriate means to keep the trading public aware of the changes to the rules, including those that involve changes at the 8-digit level. The commenter's suggestion will be kept in mind in that context.

Finally, Customs is of the opinion that the suggestion of utilizing a letter prefix to a 6-digit classification number to designate which country's tariff schedule is being applied would not be workable. An enterprise wishing to take advantage of NAFTA in any one of the NAFTA countries must classify according to the actual tariff schedule of the importing country at the 7th or 8th digit level as shown in that tariff in any case in which the specific origin rule requires a change at that level.

Comment: One commenter raised two issues regarding paragraph (d) which provides that if a U.S. exporter or producer has reason to believe that a Certificate of Origin completed and signed by him contains incorrect information affecting its validity or accuracy, he shall within 30 calendar days so notify in writing all persons to whom the Certificate was given. First, this commenter suggested a problem with the ''within 30 calendar days'' language in that significant controversy could arise in trying to pin down exactly on which day the exporter or producer had the requisite ''reason to believe''. Second, the commenter expressed some confusion as to whether a Certificate could be deemed to be incorrect if the information provided thereon was accurate when the Certificate was signed, and in this regard the commenter questioned whether the notice had to be provided in the following circumstances: (1) Whenever there is a change in the product, even if a recipient of the Certificate no longer receives the product; and (2) where the exporter or producer is uncertain as to which of its products the recipient intends to apply the Certificate. Stating that the duty to ascertain inaccuracies and search for all Certificate recipients is unrealistic and fraught with pitfalls for well-intentioned exporters or producers, this commenter suggested that paragraph (d) be redrafted to more specifically define the obligations of Certificate creators.

Customs response: The comment with regard to the commencement of the 30-day period appears to have merit. Accordingly, paragraph (d) of § 181.11, as set forth below, has been modified by inserting the phrase ''after the date of discovery of the error'' immediately after the phrase ''30 calendar days''. This additional language would encompass the discovery of an error by any involved party: the exporter, producer or verifying customs administration. The condition that no formal investigation be begun should be unaffected by the addition of this phrase. For purposes of consistency and based on the same considerations, a similar modification has been made to the text of § 181.21(b) regarding the correction of a declaration.

With regard to the issue of the specific circumstances in which notice of an incorrect Certificate of Origin must be provided, Customs would first point out that where information believed by the preparer of the Certificate to be accurate is found to be incorrect by a verifying customs administration, such information constitutes incorrect information which might affect the granting of preferential tariff treatment. Accordingly, all recipients of the

Certificate must be notified of the incorrect information so that a NAFTA claim is not made based on erroneous information.

Where there is a change to a product and the recipient of the Certificate covering that product no longer receives the product, it is the position of Customs that if the product change affects the eligibility of the product retroactively and if the recipient based its claim of NAFTA treatment for that product on an incorrect Certificate, the recipient must be sent a corrected Certificate so that it might correct its entry. Prospective shipments of the product should be covered by a new Certificate given to current importers of the product.

Finally, as regards a case in which the exporter or producer is uncertain as to the specific products to which the recipient intends to apply the Certificate, it is the position of Customs that an exporter or producer must assume that each recipient of its Certificate intends to utilize it for all products listed thereon and thus must be notified of any incorrect information appearing on the Certificate.

Section 181.12

A commenter stated that this section imposes overly broad and burdensome recordkeeping requirements on U.S. exporters and producers whose goods qualify as originating goods under an origin criterion that does not involve a regional value-content requirement. Since in such a case data as to cost, value and payment are irrelevant in qualifying as an originating good, this commenter states that § 181.12 should be written so as to require only that recordkeeping which is necessary to demonstrate the correctness of the basis upon which originating status is claimed.

Customs response: The recordkeeping requirements contained in paragraph (a) of this section, including the specific types of records to be maintained, reflect the provisions of Article 505 of the Agreement which was implemented by an amendment to 19 U.S.C. 1508 effected by section 205 of the Act. Moreover, this comment fails to recognize a basic problem that could arise from use of the suggested minimalist approach: a customs administration may have no choice but to deny a claim for preferential tariff treatment if the claimed basis for originating status is not valid and no records have been maintained to support an applicable alternative basis involving a regional value-content requirement.

Part 181, Subpart C (Import Requirements)

Section 181.21

Comment: With regard to the requirement under paragraph (a) that the claim for preferential tariff treatment be based on a Certificate of Origin in the possession of the importer, one commenter stated that the regulatory provision is unclear as to whether possession of a copy of the Certificate would satisfy this requirement. This commenter stated that permitting use of copies of a Certificate is necessary where there are multiple importer customers, where goods are exported to two NAFTA countries, and where a supplier provides a Certificate to a central location of a producer which has subsidiaries operating in more than one NAFTA country.

Customs response: Customs believes that this commenter makes a valid point. Accordingly, paragraph (a) of § 181.21, as set forth below, has been modified to provide for possession of a copy of a Certificate of Origin.

Comment: With regard to the written declaration under paragraph (a) and the written correction of a declaration under paragraph (b), a commenter suggested that additional provision should be made for effecting both actions by electronic means in order to reflect the Customs Modernization provisions of the Act.

Customs response: Although the suggestion has some merit in principle, Customs believes that it would be premature at this time to revise these paragraphs to provide for electronic means for complying with their provisions. As Customs implements the Customs Modernization provisions of the Act, it will identify which regulatory activities may be performed electronically and will amend the regulations accordingly. At that time, these NAFTA provisions will be reviewed and, if necessary, brought into line with whatever changes are made elsewhere in the Customs Regulations with respect to the electronic filing of entry information.

Comment: One commenter stated that paragraph (b) should require that Customs send to the importer's surety a copy of the importer's corrected declaration because, if the importer fails to pay the required duties, the surety will not be aware of this circumstance until the entry is liquidated and demand is made upon the surety.

Customs response: Customs does not now notify sureties during the entry process, and that policy should continue to be applied in the context mentioned by this commenter.

It should also be noted that the failure to deposit estimated duties when due is a bond breach, and Customs may make an immediate demand in the event of a breach. There is no basis for a different procedure when the bond principal breaches that provision at the time of entry or when the bond principal breaches that provision at the time of filing a corrected declaration.

Section 181.22

Comment: For purposes of submitting a Certificate of Origin to Customs under paragraph (b), one commenter stated that, by referring to a Certificate ''signed by the exporter or producer'', the regulation appears to permit the exporter to simply provide the producer's Certificate to the importer. This commenter suggested that, if this is so and if the producer were allowed to execute a single Certificate and provide copies thereof to its customer exporters who then could provide copies to their customer importers, the following benefits could be realized: (1) A producer Certificate would not have to be re-executed by exporters; (2) a possessor of a Certificate would always know who the producer of the goods was; and (3) administrative effort would be reduced by requiring creation of only a single Certificate.

Customs response: While the commenter's suggestion has some logic and merit under the regulatory text as written, Article 501(3) of the Agreement (and § 181.11(b) in a U.S. export context) are quite clear that an importer's claim for preferential NAFTA tariff treatment can only be based on a Certificate of Origin prepared by the exporter of the good. Moreover, any Certificate completed by a producer is done voluntarily whereas that prepared by the exporter is a requirement for claiming NAFTA treatment. In order to remove any ambiguity and ensure consistency with the terms of the Agreement, paragraph (b)(2) of § 181.22, as set forth below, has been modified by removing the two references to ''or producer''.

Comment: One commenter stated that this section should be modified to require that Customs provide notification to the importer's surety whenever the importer fails to comply with a request for submission of a Certificate of Origin. This would enable a surety to minimize its risk in cases involving a series of related importations which result in denial of preferential tariff treatment and issuance of a claim for increased duty under the surety's bond.

Customs response: The comment response under § 181.21 above regarding

notice to a surety applies equally to this comment. Moreover, the principal may pay the duty so that no bond breach would occur. In any event, the requested change would inject Customs into the contractual relationship between the surety and its bond principal. The submission of document copies is a matter that is best resolved between the principal and its surety.

Part 181, Subpart D (Post-Importation Duty Refund Claims)

Section 181.31

Comment: One commenter stated that this section should be amended to expressly permit sureties to submit post-importation NAFTA claims so that sureties may protect their interests, for example in a case where the importer is out of business and the surety has a liability on the transaction. This commenter argued that this would be a logical and much needed extension of surety rights under the administrative process, noting in this regard that sureties presently can file protests, petitions for relief from liquidated damage claims and petitions under 19 U.S.C. 1520(c).

Customs response: Both Article 502(3) of the Agreement and the U.S. implementing statute specifically provide for the filing of a post-importation claim by the importer. While 19 U.S.C. 1514(c) expressly provides for the filing of a protest by a surety in its own right, no corresponding surety right is reflected in 19 U.S.C. 1520(d) which was added by section 206 of the Act. Of course, a surety or any other party acting as a duly authorized agent may file a post-importation claim on behalf of its importer principal.

Section 181.32

Comment: One commenter complained of the post-importation refund claim documentary requirements in paragraphs (b)(3)–(5) of this section, pointing out that the written statements specified therein constitute added and burdensome requirements that are not applied either in the case of a NAFTA claim made at the time of entry or in the case of any other post-importation claim procedure under Part 173 or 174 of the Customs Regulations. This commenter therefore suggested removal of these requirements.

Customs response: The written statement requirements for post-importation claims are designed to prevent an overpayment of a duty refund such as drawback. Customs notes that there are parallel NAFTA requirements for drawback and duty deferral program participants under Part 181 (see §§ 181.47 (b) and (c) and § 181.53(a)(3)). Accordingly, Customs believes that these requirements must be retained.

Section 181.33

Comment: Two commenters referred to paragraph (d)(3) which provides that where the entry covering the good has been liquidated, whether or not the liquidation has become final, a post-importation refund claim may be denied without reliquidating the entry. One of these commenters stated that this section and Part 174 of the Customs Regulations should include the right to file a protest within 90 days of the denial of the claim whether or not the liquidation has become final. The other commenter stated that the regulations do not, but should, provide for an administrative appeal process in the case of a denial issued more than 90 days after liquidation of the entry.

Customs response: Customs agrees that a claimant has a right to file a protest based on a denial of a NAFTA post-importation claim, including in cases in which the claim is denied more than 90 days after liquidation of the entry and without reliquidation of the entry, and Customs also agrees that the regulations should explicitly reflect this right. Accordingly, § 174.12(e)(2), which specifies when the 90-day time period for filing a protest begins in the case of a protest against a decision not involving a liquidation or reliquidation, has been modified as set forth below by the inclusion of a specific reference to a claim filed under 19 U.S.C. 1520(d).

Customs notes that in the case of a denial of a post-importation claim on the merits (that is, where the denial is based on a negative origin determination rather than on procedural grounds), a person who signed a Certificate of Origin relating to the good at issue has a right to file a protest against the denial (see 19 U.S.C. 1514(c)(2)(E) and interim § 174.12(a)(5) as republished below). In order to reflect current Customs practice, §§ 181.33 (d)(2) and (d)(3), as set forth below, have been modified to provide that the notice of denial of the claim in such cases shall include a statement regarding the right to file a protest against the denial under Part 174 of the regulations.

Part 181, Subpart E (Restrictions on Drawback And Duty-Deferral Programs)

Section 181.41

Comment: Two commenters stated that this section implies that the effective dates of 1996 and 2001 apply only where preferential tariff treatment under NAFTA is claimed. This is not correct and therefore it should be made clear that these effective dates apply to all merchandise whether or not NAFTA preferential treatment is involved.

Customs response: Customs agrees that the subpart covers all exports to Canada or Mexico, whether a claim for preferential tariff treatment is made or not. Accordingly, the second sentence of § 181.41, as set forth below, has been modified by inserting a period after ''January 1, 2001'' and removing the rest of the sentence.

Section 181.44(a)

Comment: A commenter pointed out that it is too difficult for the drawback claimant to ''discover'' the duty paid on the merchandise when it is imported into the United States and when it is imported into Canada and Mexico. As an alternative, this commenter suggested that a NAFTA control number be placed on the commercial invoice when a drawback claim is expected to be filed. Each U.S. exporter could use its tax identification number (from the Certificate of Origin) followed by a date code and a sequential number. This control number should become part of the import records associated with NAFTA claims in Canada or Mexico.

This commenter went on to state that whenever this sequential NAFTA drawback control number appears, Canadian or Mexican Customs should enter the amount of duty from the import entry, together with the control number, into a database which could be downloaded into the U.S. Customs computer system. The data could then be accessed by U.S. Customs through ABI to determine duties paid upon importation into Canada or Mexico. Upon liquidation of the import transaction in Canada or Mexico, the computer record would be updated. The drawback claimant should be allowed to waive the right to claim a refund of the amount equal to the additional duties that would be owed to Canadian or Mexican Customs. This would set the date of entry when duties have been paid in Canada or Mexico for drawback purposes. The commenter suggested that without a link between the three Customs administrations, drawback claims will be delayed.

Customs response: This commenter recognizes that the Agreement and the statute require the amount of duty paid in Canada or Mexico to be reported. The commenter's proposal to require a drawback control number to be placed on the commercial invoice and for the Customs Services of the three countries to monitor that number would be extremely burdensome. In addition,

Customs is aware that many U.S. importers have alleged an inability to obtain the foreign invoice. Such inability can only result from a failure of the commercial participants to address the issues in a timely manner. Drawback claims require that the commercial participants resolve these information issues in the terms of the sale before the export so that the required information on the completed transaction can be presented to Customs to establish any drawback eligibility. Paragraph (c) of § 181.47 lists the required evidence.

Comment: A commenter stated that any claim based on estimates (that is, the NAFTA duty rate multiplied by the invoice value) would not take into account duty exemptions that may be available to Canadian and Mexican importers and that may not be apparent on the face of the commercial documents (for example, articles assembled abroad and returned). If there are no such exemptions and value can be determined on the face of the commercial documents, then the claimant should be allowed to base the duty amount on the appropriate NAFTA duty rate in Canada or Mexico multiplied by the FOB value.

Customs response: Drawback claimants cannot base their claims on estimates; rather, each claim must be based on the liquidated amount of duty paid on the import entry for goods entered into Canada or Mexico.

Section 181.44(b)

Comment: Two commenters stated that this section is unclear as to the calculation of drawback when two or more components are used in the process of manufacture. One of these commenters raised the question of whether the comparison of duty paid must be between the duty paid on each component part and the duty paid on the finished article exported to Canada or Mexico or between the total duty paid on all component parts and the duty paid on the finished article exported to Canada or Mexico. This commenter provided the following example:

> Two parts, X and Z, are imported duty-paid into the United States at $2.00 and $4.00, respectively. Assume article Y is manufactured and exported to Canada or Mexico and duty of $5.00 is due. Does the lesser of the two duties apply to X and Z individually (resulting in $6.00 in drawback) or collectively (resulting in $5.00 in drawback)?

Customs response: With respect to the duty comparisons, the comparison should be made on an individual basis regardless of whether two components are used to make one export article or one component, such as a chemical, is split into two export articles. Section 181.44, as set forth below, has been modified by redesignating paragraphs (b)–(e) as (c)–(f) and adding a new paragraph (b) which sets forth the relative value calculation and individual comparison principle and includes the following example:

> Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

Section 181.44(c)

Comment: Three commenters expressed concern about the statement in § 181.44(c) (redesignated in this document as § 181.44(d) as discussed above) that ''same kind and quality'' is synonymous with ''identical or similar good''. They stated that this terminology should not restrict or eliminate rulings and court cases related to same kind and quality. Another commenter stated that making the term ''same kind and quality'' synonymous with the terms ''identical'' or ''similar'' seems to eliminate substitution drawback since identical or similar goods are defined in part as ''goods that were produced in the same country as that good''. If this is true, then the example in this section is incorrect because it allows for the substitution of foreign and domestic goods. On a related subject, a commenter raised the point that the statement that the two terms are synonymous leaves the door open for narrowing the scope of the ''same kind and quality'' provision to that of ''identical or similar.'' This commenter was of the view that it should be stated that all rulings, court cases or other determinations pertaining to same kind and quality will be the guiding force in understanding the meaning of ''identical and similar good.''

Customs response: Although it is true that the term ''same kind and quality'' is considered to have the same meaning as the term ''identical or similar'', Customs does not intend to require that the substituted merchandise come from the same country to qualify for manufacturing drawback under the NAFTA. Section 181.44(d), as set forth below, has been modified to clarify these points.

Section 181.45

Comment: With regard to the reference in this section to ''same condition'' instead of ''unused merchandise'', three commenters questioned whether a third unique type of drawback is contemplated by this regulation, that is, same condition drawback for NAFTA countries and unused drawback or manufacturing drawback for all other countries. Otherwise, they stated that the terminology used in the NAFTA and in 19 U.S.C. 1313(j), as amended by section 632 of the Act, must be harmonized. Also on this subject, another commenter stated that, for consistency, the term ''same condition drawback'' should be replaced with ''unused merchandise drawback.''

Customs response: The Agreement was signed by the United States on December 17, 1992. The United States could not, without reopening negotiations with the two other Governments, incorporate changes made to its national laws subsequent to December 17, 1992, in its obligation to implement the Agreement. Consequently, with respect to trade between the three NAFTA parties there will be unavoidable inconsistencies when compared with trade between the United States and countries outside the Agreement. It is simply impossible to eliminate all differences between the provisions of sections 203 and 632 of the Act by regulation. In trade between NAFTA countries the provisions of section 203 of the Act control. Subpart E can do no more than to implement section 203 of the Act.

Section 181.45(b)

Comment: Two commenters stated that the second sentence of the example should be amended to simply read ''X immediately exports the desk to Z in Mexico'' because, whether or not duties are owed in Mexico, the mere fact of exportation will allow X to obtain a refund of 99% of the $25.00 in duty paid upon importation of the desk into the United States. These commenters went on to state that the fact that Z pays duty of $10.00 in Mexico is moot: 19 U.S.C. 1313(j)(1) contains no limitation based upon payment of duties in the NAFTA country of import. Thus, including the $10.00 Mexican duty in

the example rather than a ''whether or not'' phrase regarding payment of duty in Mexico, will be confusing to industry and to Customs personnel. Since the amount of duty is only germane in calculating the ''lesser of two duties'' under a manufacturing scenario, these commenters stated that the suggested modifications of the example would more accurately reflect the law.

Customs response: The sentence which precedes the example, together with the example, illustrates precisely the point made by the comment.

Comment: A commenter stated that the term ''commercially interchangeable'' should be substituted for ''completely fungible'' in subparagraph (2) of this section.

Customs response: In order to avail oneself of full drawback under direct identification, the Agreement and implementing legislation permit identification of the exported good as the imported good by means of a recordkeeping system only if the goods are fungible and commingled. Section 181.45(b)(2)(i), as set forth below, has been modified as explained below in the response to the comments submitted regarding Schedule X of the Appendix to Part 181, and the modified text does not include the superfluous word ''completely'' before ''fungible''.

Section 181.45(c)

Comment: One commenter stated that the statement ''X exports it within 90 days'' in the example under this section should be changed to refer to ''within 3 years''.

Customs response: The period for exportation is clearly stated in § 181.45(c). An example cannot impose a further qualification on either the statute or implementing regulation. So long as the period is less than 3 years the example correctly illustrates the provision.

Section 181.46(b)

Comment: Two commenters stated that the existing exporter's summary procedure and waiver of prior notice provisions and the new provisions for ''unused merchandise drawback'' eliminate the need to inspect the goods prior to export because it would be too difficult for Customs to determine ''unused'' status by visual inspection. These two commenters, after stating that the Office of Trade Operations has indicated that the required 5 days of prior notice may be shortened to 48 hours, suggested that any change to this time period in Part 191 of the Customs Regulations should be reflected in the corresponding provision in Part 181. In addition, one of these commenters pointed out that there never existed a requirement for filing at the port of exportation.

Customs response: Although the exporter's summary procedure and waiver of prior notice provisions are not specifically provided for in the NAFTA, they are not new to the Drawback Program. Therefore, the existence of these two privileges would not be a basis for eliminating the physical inspection of the goods. With respect to shortening the prior notice period from 5 days to 48 hours, this principle already has been considered by Customs in connection with a pending proposed revision of Part 191 of the Customs Regulations. Section 181.46(b), as set forth below, has been modified to specify a prior notice period of 2 working days rather than 5 days.

Comment: One commenter pointed out that the statement in this section that ''[g]enerally, for same condition drawback, the claim would be filed with the Customs port where the examination would take place'' is not practical and not required by law.

Customs response: Because there are currently no requirements that claimants file same condition claims at the port where the examination will take place, Customs agrees that this statement should be replaced by the following: ''To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place''. Section 181.46(b) as set forth below has been modified accordingly.

Comment: A commenter requested that the text of this section be replaced by the appropriate sections from Part 191 of the regulations. The commenter did not explain the basis for this comment.

Customs response: Customs believes that the new language set forth in the preceding response will at least in part address this comment.

Section 181.47(a)

Comment: Two commenters stated that this section places an undue burden on the claimant because it requires the claimant to monitor the enforcement of the Canadian or Mexican Customs regulations. These commenters also argued that the section is also unfair in that it requires the claimant to have access to duty payment information to which it is not privileged, when sometimes the claimant does not even know who the ultimate importer is in Canada or Mexico.

Customs response: The Agreement provides that the amount of the duties paid in the destination NAFTA country must be presented by the person seeking a refund of that duty from the exporting NAFTA country. In order to obtain the refund, the claimant must obtain the cooperation of its customer in Canada or Mexico.

Section 181.47(b)(1)

Comment: Two commenters complained that the Canadian or Mexican Customs entry and the document referred to as the ''certification'', which are required to be submitted under this section, are too difficult for the U.S. exporter to obtain. Two other commenters stated that requiring both documents is redundant and contradictory to the paperless entry concept. Another commenter suggested that the entry documents should not be required but rather should be used only if available and that certification should only be provided in the event of an audit.

Customs response: The provision reflects a basic and necessary component of a proper NAFTA drawback claim and is not redundant since alternative methods may be used to establish that amount as set forth in paragraph (c) of § 181.47. As regards the alleged burden imposed by this provision, and as noted elsewhere, a drawback claimant will need the cooperation of its Mexican or Canadian customer in order to benefit under the agreement.

Section 181.47(b)(2)(i)

Comment: Two commenters believed that the documents required in Part 191 of the regulations satisfy the NAFTA requirements. They stated that commercial invoices, proof of payment of duties and import documents relating to an exportation to a foreign country have never been required with drawback claims under Part 191 and should only be required in the event of an audit. These two commenters also stated that these documents would not be required at the time of filing the claim under the exporter's summary procedure.

Customs response: Paragraph (c) of § 181.47 does not require filing of the Canadian or Mexican Customs entry because, under subparagraph (4), the drawback claimant may file an affidavit in lieu of the Canadian or Mexican entry document provided that certain specified information is also submitted. The requirement for these new documents is a result of the new ''lesser of the two'' system which is part of the NAFTA Agreement. The documents required in Part 191 of the regulations would not enable either the claimant or Customs to have knowledge of the

amount of duties paid upon importation into Canada or Mexico.

Section 181.47(b)(2)(ii)(G) provides an alternative means for a drawback claimant under 19 U.S.C. 1313(j)(1) to show exportation.

Section 181.47(b)(2)(i)(A)

Comment: Four commenters stated that it is unclear why the tariff classification number of the imported merchandise is needed when the drawback is based upon the duty paid (regardless of the tariff number). These commenters further stated that tariff numbers have never played a significant role in drawback before.

Customs response: The tariff classification number will facilitate processing drawback claims by Customs. The use of a number rather than a textual description is better adapted to automated processing procedures. In the near future, tariff numbers will be required for all drawback claims, not just for NAFTA claims. These numbers are needed for compiling profiles as part of the planned selectivity system for drawback.

Because drawback claims under the Agreement require a comparison on an individual basis, as noted by these same commenters, with respect to § 181.45, the line item information is needed in order to process a claim under the Agreement.

Section 181.47(b)(2)(i)(B)

Comment: An objection was raised by three commenters regarding the requirement of submission of the commercial invoice because many importers do not have a hard copy of this document. These commenters argued that submission of the commercial invoice is contrary to the Customs modernization provisions of the Act and to the principles of automation, and they further stated that the commercial invoice is difficult to obtain because it contains proprietary information. Two of these commenters also pointed out that Customs will not have sufficient staff to review all of this documentation.

Customs response: Customs agrees that claimants should not be required to submit Customs Form 7501 and copies of commercial invoices with their claims unless they are requested by Customs. Accordingly, § 181.47(b)(2)(i)(B), as set forth below, has been modified to specify only ''Customs Form 7501 or the import entry number''. It should be noted, however, that claimants (and other parties who provide information on which a claim is based) must continue to maintain records to support the claim and make them available upon request. This includes records of importation and invoice-level information.

Section 181.47(b)(2)(i)(C)

Comment: Three commenters objected to the inclusion of the Canadian and Mexican entry numbers on the exporter's summary procedure because: (1) These numbers are not available to the exporter; (2) the exporter's summary procedure was not intended for this purpose; and (3) the courts have ruled that when information such as this is impossible to obtain the ''best evidence available'' must be accepted.

Customs response: These numbers are needed in order for the NAFTA countries to implement a data exchange system which will be used to verify the requested amount of drawback based on the ''lesser of the two'' system. The NAFTA parties will provide each with a tape of entry numbers and corresponding duty payments so that claimed amounts may be verified on a spot-check basis. Entry numbers are needed for this system to work.

Section 181.47(b)(2)(i)(D)

Comment: Three commenters stated that the NAFTA regulations should require only ''evidence of exportation'', as is required in Part 191 of the regulations, rather than the ''proof of exportation'' provided for in this section and in other sections of these NAFTA regulations.

Customs response: Customs agrees that the term ''evidence'' should be substituted for the term ''proof'' in each such context in order to be consistent with Part 191 of the regulations, and the Subpart E texts, as set forth below, have been appropriately modified throughout.

Section 181.47(b)(2)(i)(E)

Comment: Three commenters stated that waivers of rights to drawback are already available in the form of certificates of delivery and certificates of manufacture, and therefore any additional waiver requirement is redundant.

Customs response: The certificate of delivery does not waive any right to drawback particularly in light of the right to transfer substitute merchandise. This certificate makes it absolutely clear to the certifier that it may not claim any drawback with respect to the merchandise covered by the waiver.

Comment: A commenter questioned the validity of the waiver of the right to drawback by the importer in favor of the exporter when § 181.48(a) clearly states that the exporter is entitled to drawback.

Customs response: A waiver is needed from the importer who transfers any merchandise to a manufacturer and issues a certificate of delivery. A manufacturer who transfers merchandise to an exporter and issues a certificate of manufacture and delivery also needs to issue a waiver.

Section 181.47(b)(2)(i)(F)

Comment: Three commenters stated that the requirement that the drawback claimant provide a certification that he has not issued a Certificate of Origin for the goods to another party, or that he will notify Customs if he does so, is not valid because there is no NAFTA provision that precludes drawback when NAFTA preference is taken. One commenter stated that the separate certification or affidavit is not needed because it is well known that double dipping is illegal.

Customs response: The requirement is necessary since it is far from obvious that providing a Certificate of Origin which enables a Mexican or Canadian importer to obtain a duty reduction or refund from Mexico or Canada would be considered illegal double-dipping by a United States drawback claimant since that claimant would not necessarily benefit directly from the actions of its customers.

Comment: Another commenter took issue with the requirement for an affidavit by a manufacturing claimant certifying that no other claim has been filed on the goods. This commenter stated that once the claimant receives either a certificate of delivery or a certificate of manufacture and delivery, he can only certify that he has not made any other claim on the goods. The manufacturing claimant will not know whether the importer or any other party makes a claim on the goods.

Customs response: The commenter appears to compare the requirements of § 181.47(b)(2)(i)(F) and § 181.51(b). The Customs recordkeeping statute, 19 U.S.C. 1508, as amended by section 205 of the Act, does not prohibit a drawback claimant from providing an affidavit on the preparation of a Certificate of Origin with the drawback claim. It does require a drawback claimant to report such facts within 30 days of filing a drawback claim if that claimant has not already done so.

Informed compliance means that the Government is under an obligation to inform persons who deal with it which acts are proscribed. The regulation which requires a certification that the same import entry for the same designation of goods has not been used in more than one claim fulfills that obligation.

Section 181.47(b)(2)(ii)(A)

Comment: Two commenters stated that the requirement for the tariff classification at entry is superfluous.

Customs response: As already pointed out, in the near future tariff numbers will be required for all drawback claims, not just for NAFTA claims. These numbers are needed for compiling profiles as part of the planned selectivity system for drawback.

Section 181.47(b)(2)(ii)(B)

Comment: Four commenters stated that the requirement regarding submission of commercial invoices is in conflict with the requirements of the Customs modernization provisions of the Act and is a step backwards in the automation process. These commenters further argued that these documents are impossible to obtain when the claimant is not the importer. One of these commenters suggested requiring a pro forma invoice instead for same condition claims in order to resolve the latter problem. Another of these commenters stated that the detail required in this section may not be available due to automation and paperless entries and that it should be changed to refer to Customs Form 7501 and any appropriate documentation which identifies the subject goods. Another commenter stated that the entry documents (such as Customs Form 7501) may not be available because of confidentiality considerations.

Customs response: Again, Customs agrees that claimants should not be required to submit commercial invoices with their claims. Accordingly, § 181.47(b)(2)(ii)(B), as set forth below, has been modified by removing the two references to commercial invoices, and § 181.47(b)(2)(iii)(B), as set forth below, has been similarly modified for purposes of consistency. However, Customs would again point out that claimants (and other parties who provide information on which a claim is based) must possess and maintain records to support the claim and make them available upon request. This includes records of importation and invoice-level information.

Section 181.47(b)(2)(ii)(G)

Comment: Two commenters stated that this section should begin with the words ''If exporter summary procedures are not in force''. In addition, two commenters stated that the words ''* * * and signed in ink'' should be deleted because obtaining an original ink signature on a nonnegotiable copy of a document is an unnecessary burden. Finally, one commenter stated that this section does not take into account claimants using procedures under § 191.51 of the regulations and that it should be amended to reflect that fact.

Customs response: Customs agrees that where the exporter's summary procedure is approved for the claimant, the requirement in § 181.47(b)(2)(ii)(G) is not applicable; accordingly, this section as set forth below has been modified by adding at the beginning of the first sentence the words ''If a claimant is not approved for the exporter's summary procedure,''. In addition, while the evidence of export document must be signed, Customs agrees that the signature need not be in ink; accordingly, the section as set forth below has been modified by removing the words ''and signed in ink'' from the first sentence. Finally, Customs agrees that this section should reflect that evidence of exportation may also be established in accordance with the provisions of § 191.51; accordingly, § 181.47(b)(2)(ii)(G), as set forth below, has been modified by adding at the end of the first sentence the words '', or any other evidence of exportation provided for in § 191.51 of this chapter''.

Section 181.47(b)(2)(ii)(H)

Comment: Three commenters stated that providing a waiver from the importer is redundant since a certificate of delivery already serves the same purpose. One of these commenters suggested that if Customs must have it, it should be provided for directly on the certificate of delivery.

Customs response: A certificate of delivery does not in itself constitute a waiver of the right to claim drawback. Thus, an explicit waiver is necessary.

Customs agrees in principle that the waiver could be incorporated into the certificate of delivery form. However, until that form is revised to include the waiver, a separate waiver is needed.

Section 181.47(b)(2)(ii)(I)

Comment: One commenter recommended that the affidavit be incorporated onto the ''J'' side of Customs Form 7539, but with reference to ''designated goods'' changed to ''identified goods''. Another commenter stated that the affidavit is unnecessary but that if Customs must have it, it should be included on the drawback entry form instead.

Customs response: So long as the affidavit is included with the drawback entry, the legal requirement will be satisfied.

Section 181.47(b)(2)(iii)(B)

Comment: One commenter objected to the requirement of submission of the commercial invoice because it will not be available in hard copy. This commenter stated that a pro forma invoice would solve this problem.

Customs response: Customs took the position in promulgating 19 CFR 191.142(b)(6) that drawback under 19 U.S.C. 1313(c) is payable to an exporter claimant who is the importer of record or the actual owner named in the import entry. There is nothing in section 203 or 632 of the Act which would require a change to that position. As such, it is unclear why the person who ordered the merchandise and who determined that the merchandise did not meet the order specifications would not have the original invoice issued by the foreign supplier.

Section 181.47(b)(2)(iii)(C)

Comment: It was pointed out by a commenter that import documents for foreign countries are not available to the U.S. seller and that it is virtually impossible for the U.S. seller to obtain proof of payment and final duty determination notices.

Customs response: The commenter has misread the section. Subparagraph (C) states the evidence needed to show that the specifications were not met.

Section 181.47(c)

Comment: Two commenters stated that the phrase ''for purposes of evidence of duties paid'' is confusing in that § 181.47(a) also refers to ''evidence of exportation''. They also suggested that Customs may want to consider a single definition for ''evidence of exportation'' as has always been done under Part 191 of the regulations and introduce specific requirements only for 19 U.S.C. 1313 (a) or (b) drawback for ''evidence of duties paid'' since this information is germane only to manufacturing drawback when calculating the ''lesser of the two duties''.

Customs response: It would be quite difficult for Customs to draft an affidavit for the parties. The language needed to demonstrate that the claimant's goods were received by its Mexican or Canadian customer and the amount of duty paid to Canada or Mexico by that customer would depend on that customer's statement.

There is a difference between the provision on exportation in § 181.47(b)(2)(ii)(G) (which has specific reference to 19 U.S.C. 1313(j)(1)) and the provision in § 181.47(c). Because in the former case there is full drawback available without a comparison between the duty that was paid in the United States and the duty paid in Canada or Mexico, the provisions necessarily

differ. The provisions of § 181.47(c) also apply in a NAFTA context to other duty reduction programs such as temporary importations under bond, bonded warehouses, and foreign trade zones (*see* § 181.53(a)(3)).

Section 181.48

Comment: With regard to paragraphs (b) and (c), two commenters pointed out that the wording is confusing and not consistent with ''mainline'' drawback in that, under Part 191 of the regulations and under the Customs modernization provisions of the Act, it is always the exporter of record who is entitled to drawback. One of these commenters suggested the following alternative language: ''The exporter of record is entitled to the drawback unless the exporter directs in writing that another entity receive the drawback refund.''

Customs response: The provision in § 181.48(b) follows the position set forth in 19 CFR 191.142(b)(6). Section 181.48(c) is consistent with current law regarding the identity of the claimant for same condition drawback. The Customs modernization provisions of the Act followed this interpretation with respect to the identity of the claimant for unused merchandise drawback.

Section 181.49

Comment: One commenter stated that this section does not specify which records are required to be kept by the exporter, importer, manufacturer or producer. This commenter argued that Customs recordkeeping requirements are strictly limited to those records which are referenced in the statute and that this is consistent with Congressional intent under H.R. 3450. This commenter also suggested that Customs review the commentary in the House Report with regard to section 632 of the Act and that Customs also compare § 181.49 to § 181.53(g).

Customs response: The types of records are set forth in § 181.47(b); this section simply sets the retention period. Since payment occurs in most instances under the accelerated payment program before liquidation takes place, the period starts and ends earlier. In any event, § 181.49 follows the existing policy set forth in 19 CFR 191.5. Customs notes that 19 U.S.C. 1313(t), which was added by section 632 of the Act, makes the general recordkeeping requirements set forth in 19 U.S.C. 1508(c) applicable in the context of drawback certificates and provides that the retention period starts on the date the certificate is issued in the case of a person who issues a certificate relating to another person's drawback claim. Accordingly, § 181.49, as set forth below, has been modified by adding at the end the following sentence: ''However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.''

Section 181.50(a)

Comment: A commenter raised the issue that whereas the regulations require that the amount of duties paid to Canada or Mexico be ''established'' as a prerequisite to the completion of the claim, they do not provide instructions as to how these duty amounts will be established and they do not prescribe a time frame in which the duty amounts will be settled for the purpose of finalizing the claim.

Customs response: This section describes generally the process by which Customs will determine the amount of drawback to be paid. A directive for the guidance of Customs officers will address the internal Customs procedures that will implement the process in detail. With regard to the time frame issue, see the discussion of § 181.50(b) below.

Section 181.50(b)

Comment: Two commenters stated that requiring liquidation of entries made in Mexico and Canada before a drawback claim is liquidated eliminates most drawback claims from the Customs modernization act bypass system. In a related comment, another commenter stated that this section is in conflict with the Customs modernization provisions of the Act in a bypass (selectivity) system context because the liquidation of all designated import entries is no longer required for drawback liquidation. This commenter argued that requiring that there be prior liquidation of the import entry in Canada or Mexico undermines the process and conflicts with the requirement for fair and reasonable procedures as described in the legislative history accompanying the Customs modernization provisions of the Act.

Customs response: Customs will not be able to determine the ''lesser of'' the two duties unless the final amount of duties paid upon entry to Canada or Mexico is available. See also the response to the next comment.

Comment: A commenter stated that a time limit for liquidations is needed and that the current indefinite time period is in conflict with the intent expressed by Congress in the new drawback provisions contained in section 632 of the Act. In this regard this commenter referred to the accompanying House Report in which it was stated that ''the Committee expects that Customs should issue drawback regulations which take into consideration the various time limitations for recordkeeping, filing claims, amendments and clarifications and for auditing and liquidating drawback claims.''

Customs response: There is no requirement under the law that provides for a specific time period for liquidation of drawback claims, and practical considerations (including differences in the entry laws of the three NAFTA Parties) militate against imposing a strict time limit for liquidation of a drawback claim.

On a related subject, the United States and Canada have agreed that each import transaction involving goods subject to a NAFTA drawback claim in the exporting country should be monitored for a period of 3 years so that appropriate information may be provided to the exporting country for purposes of applying the ''lesser of'' rule; this 3-year period was chosen because it represents in most cases the time during which all factors affecting ultimate finalization of the import entry (including changes to the entry made by the importer after importation) would be set. Accordingly, § 181.50(b) as set forth below has been modified to provide that a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico.

Comment: A commenter made the following suggestion with respect to the policy that liquidation of the drawback claim not occur until the liquidation of the Canadian or Mexican customs entry has become final: In order to avoid a long waiting period, a waiver of the right to challenge the amount of estimated Canadian or Mexican duties should be established. Under this procedure, the claimant would agree to waive the right to claim any additional duties owed to Canadian or Mexican Customs.

Customs response: The commenter alleges that liquidation of a drawback claim can be done more quickly if the right to challenge the amount of duties assessed by Canada or Mexico is waived. However, a U.S. drawback claimant, unless it is also the importer into Mexico or Canada, has no right to waive the amount of duty paid by the Mexican or Canadian importer. Also, a system involving payment of drawback claims based upon the waiving of rights to challenge the Canadian or Mexican duty amounts could result in the United

States issuing an overpayment to the drawback claimant each time the import entry was liquidated for a lower amount of duties. The change to § 181.50(b) discussed in the response to the preceding comment represents Customs view regarding the proper time period during which liquidation of a drawback claim should not take place.

Section 181.50(c)

Comment: With respect to the requirement that a person who receives a drawback refund through accelerated payment must repay the duties if a NAFTA claim is adversely affected thereafter, a commenter stated that this should be amended to state that repayment is not required until the adverse decision has been made final by the courts and/or by operation of law.

Customs response: The suggestion that a claimant who receives an accelerated payment before liquidation need not repay it until the adverse action which makes that accelerated payment erroneous would be acceptable if the bond required the recipient to repay the principal sum with interest running from the date that Customs made the accelerated payment and until repaid. Since that process could take years, the bond amounts would have to be increased accordingly to protect the revenue. Accordingly, Customs concludes that the obligation to repay arises whenever an administrative action occurs which affects the NAFTA drawback claim.

Section 181.51(a)

Comment: Three commenters noted that certifying that an entry was not designated and paid on a prior drawback claim is unnecessary because a claimant that knowingly does this is guilty of fraud, and the Compliance Program and the civil penalties should offer sufficient protection against fraudulent claims.

Customs response: Customs believes that the regulation serves a useful purpose in reminding the claimant to exercise care to make certain that double claims are not made.

Section 181.51(b)

Comment: A commenter stated that the requirement for the claimant to state that no Certificate of Origin has been provided for the goods should be changed to a statement that no other ''NAFTA'' Certificate of Origin has been provided for the goods. This is because sometimes exporters may use Certificates of Origin for other purposes (for example, for enforcement of trade sanctions).

Customs response: The first sentence under § 181.51(b) refers to a Certificate of Origin ''provided for under § 181.11(a)'', and the second sentence refers to ''any such'' Certificate of Origin; as such the Certificate of Origin cannot be mistaken for any other certificate of origin that may apply to other laws. Therefore, use of ''NAFTA'' as suggested would be redundant and thus inappropriate.

Comment: A commenter referred specifically to the requirement that the claimant provide notice of whether another person has prepared a NAFTA Certificate of Origin for those goods. This commenter stated that this is in conflict with the new regulation that the claimant provide an affidavit that no Certificate of Origin has been provided for those goods.

Customs response: Section 181.47(b)(2)(i)(F) requires a claimant to affirm that no NAFTA Certificate of Origin was provided ''except as stated on the drawback claim''. Section 181.51(b) supplements that provision and makes it clear that a claimant who provides a NAFTA Certificate of Origin must report that fact to Customs.

Comment: A commenter stated that new subsection (t) of 19 U.S.C. 1313 provides that ''any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued'' and that the interim regulations are deficient in that they do not implement the language of this statutory provision. This commenter stated that subsection (t) would be helpful because it would establish a retention period beginning on the date the certificate was issued, instead of the date of payment.

Customs response: The NAFTA Certificate of Origin record retention period is set forth in § 181.12. *See* 19 U.S.C. 1508(c). The NAFTA Certificate of Origin is not a certificate that would enable another person to claim drawback. The certificates covered by 19 U.S.C. 1313(t) are the certificate of delivery and the certificate of manufacture and delivery.

Comment: A commenter stated that should this regulation remain as is, the 30-day window for filing the Certificate of Origin after filing the claim will create another administrative nightmare for Customs because all of the affidavits regarding Certificates issued (which may come in at various times after submission of the drawback entry) will have to be matched with previously filed drawback entries. This commenter stated that some adjustment should be made in the regulatory text to meet this problem.

Customs response: This comment is unclear because there is no ''30-day window for filing the Certificate of Origin.'' There are, however, two 30-day windows established in this section which involve notifying Customs of the existence of a Certificate of Origin for goods on which drawback has been paid. These two notification periods are necessary because if a drawback claimant prepares a Certificate of Origin for its Canadian or Mexican customer, it could result in a reduction of duty paid to Canada or Mexico on the goods for which the claimant is basing its drawback claim. Therefore, it must be reported to Customs so that Customs will be able to track and adjust that drawback claim. A drawback claimant who makes a drawback claim and then provides a Certificate of Origin to its customer jeopardizes its drawback claim.

Section 181.52

Comment: Two commenters stated that this provision creates contingent liabilities on every claim filed that could go on for a significant amount of time and that, therefore, the time frames allowed under NAFTA Article 502(3) for duty refunds in Canada and Mexico should be clearly indicated. These two commenters also stated that Customs will not be able to comply with this requirement without automation, or without recording the Canadian or Mexican entry number at the time the drawback claim is filed. In this regard, they referred to language pertaining to Title VI of H.R. 3450 which states that monitoring of drawback information can only be carried out effectively through exchange of electronic information.

Customs response: The commenters are correct. The very nature of the Agreement creates that contingent liability because of the differences in national laws and the right of an importer to make a post-entry NAFTA claim that is expressly provided in the Agreement. The alternative that was considered by the three Governments was to prohibit all refunds on goods moving from one NAFTA party to another NAFTA party. Permitting limited refunds necessarily increases uncertainty.

Section 181.53

General comments: The following general comments were made with regard to the operation of this section:

1. A commenter requested that the effective dates of this section be stated at the beginning of the section.

2. One commenter stated that the regulations should address the importation of goods from NAFTA countries covered by U.S. duty deferral programs, even though there will be some duties which could be deferred under these programs until all of the staged duty reductions and eliminations under NAFTA have been completed. This commenter also asked, if a claim for preferential tariff treatment is filed upon importation, whether an importer may file a warehouse entry or application for admission to a foreign trade zone and, if the claim is valid, whether it will be honored upon warehouse withdrawal or foreign trade zone entry for consumption.

3. A commenter asked whether the ''lesser of the two'' method will apply when zero payment of duties is an issue.

4. A commenter stated that this section does not address originating goods which are entered into a bonded warehouse, manipulated to the point where they are deemed produced in the bonded warehouse, and subsequently withdrawn for consumption in the United States.

5. Three commenters stated that the 60-day allowance for obtaining proof of exportation and duty payment in Canada or Mexico should be extended to a longer period, and one of these commenters suggested a 120-day period.

Customs response: The effective dates are already stated at the beginning of Subpart E.

The comment dealing with imports from NAFTA countries is beyond the scope of Subpart E.

Zero payment of duty into Canada or Mexico will be considered in making the comparison. If no duty is paid into Canada or Mexico, there will be no duty refund or deferral. Under the agreement, Canada and Mexico are required to provide reciprocal treatment of goods sent to the United States.

The treatment of originating goods entered into a warehouse and withdrawn for consumption is beyond the scope of Subpart E.

The 60-day time period was set by Article 303(5) of the Agreement. Knowing of the time frame, there is no reason why the beneficiary of the refund cannot structure its transfer to ensure that it can comply with the time period.

Section 181.53(a)(1)

Comment: One commenter took issue with the definition of ''duty deferral'' provided in this section, stating that Class 2 and 3 customs bonded warehouses are excluded from this list, whereas their counterparts, ''warehousing/distribution foreign-trade zones'' are not excluded. This commenter stated that the initial sentence in § 181.53(e) provides a better definition of ''a good that is manufactured or otherwise changed in condition in a foreign-trade zone * * *''

Customs response: The comment seems to state that a class 2/8 warehouse or a class 3/8 warehouse is excluded from coverage of § 181.53. Such warehouses are included under § 181.53(b).

Section 181.53(a)(2)

Comment: A commenter suggested adding to this section the following phrase: ''except for a good eligible for full drawback as provided for by section 181.45 of this Subpart''. In this regard, this commenter stated that NAFTA Article 303(6) provides for several import transactions that are unaffected by any limitations on drawback refunds or duty-deferral programs. This commenter also stated that § 181.45 captures these Article 303(6) transactions for drawback refund purposes. This commenter also stated that the regulations should clearly state that a good departing a foreign-trade zone for export to Mexico or Canada under circumstances included in Article 303(6) and/or § 181.45 shall not be subject to treatment ''* * * as if it had been entered or withdrawn for domestic consumption, and thus subject to duty.''

Customs response: Customs agrees that goods entitled to full drawback under § 181.45 should be excluded from this provision. Accordingly, § 181.53(a)(2), as set forth below, has been modified by the addition of the following sentence: ''However, the provisions of this paragraph shall not apply to goods covered by § 181.45.''

Comment: A commenter questioned the meaning of the phrase ''treatment as withdrawn for consumption.'' This commenter stated that, from an operations standpoint in the case of merchandise shipments from foreign trade zones, a ''pro-forma'' Customs Form 3461 and/or Customs Form 7501 must be prepared. Since there is no legal provision for a pro-forma version of these two forms, this commenter stated that the exact methodology of how to do this should be provided in the regulations.

Customs response: With respect to the meaning of ''treatment as withdrawn for consumption'' the provision informs the person who withdraws that it will be liable for duties on a good withdrawn for exportation to Canada or Mexico unless it is exempted by the Agreement or statute. As regards documentation requirements, Customs agrees that the regulations should incorporate specific provisions setting forth the procedural (including documentary) requirements that would apply for purposes of § 181.53. However, Customs believes that it would be preferable to deal with this matter in a separate **Federal Register** document rather than include such provisions in this final rule document. Accordingly, Customs intends to publish in the near future a separate document amending § 181.53 to address these procedural issues with a view to having appropriate regulations in place on January 1, 1996, when the Subpart E provisions go into effect.

Section 181.53(a)(3)

Comment: A commenter posed several questions about the process of ''waiver or reduction'' as provided for in this section. Will a pro forma Customs entry be prepared and held or will it be filed in some manner with Customs? How will the structure of the paperwork be organized? Because merchandise that is the subject of the pro forma entry will also be the subject of a Customs Form 7512 and Customs Form 7525, how will the Census reporting structure be organized?

Customs response: The section sets the legal requirement for Customs to waive or reduce the duties paid or owed on goods sent to Canada or Mexico. As indicated in the response to the preceding comment, the documentary and other procedural aspects of § 181.53 will be addressed in a separate document.

Section 181.53(e)

General comments: The following general comments were made with regard to the operation of this section:

1. One commenter stated that, by requiring actual payment of duties to Mexico or Canada, these regulations defeat the purpose for which this 60-day hiatus was created for foreign trade zones. This purpose was to address the paperwork and procedural burden the proposed ''NAFTA Drawback'' would impose on Customs and on companies that use foreign trade zones and export to Canada and/or Mexico. This commenter saw the burden as follows:

Step One—Merchandise shipped from a zone to Mexico and/or Canada with an appropriate tariff payment to U.S. Customs.

Step Two—Merchandise arrives in Mexico or Canada with appropriate tariff payments made.

Step Three—The U.S. exporter files for NAFTA Drawback with the evidence of payment(s) made in Canada or Mexico.

This commenter went on to state that, originally, the 60-day hiatus was

expected to provide an opportunity to combine steps one and three but that, by requiring payments to be made, this section forces a return back to the three-step procedure. As it is, the potential for this situation already exists when a Mexican or Canadian importer decides to use a deferral program that extends his payment of duties owed beyond the 60-day schedule imposed on the U.S. exporter. The regulations and H.R. 3450 provide adequate anti-fraud provisions to protect against the opportunity for any abuses that the suggested modifications might otherwise provide. Moreover, § 181.52 provides for the adjustment of drawback payments pursuant to a NAFTA preference claim made subsequent to the payment of a NAFTA drawback refund. This commenter therefore suggested that in similar fashion such a protection could become part of the § 181.53(e) procedures so that evidence of duty paid could be based on the duty owed (but not yet paid) in Mexico or Canada.

2. The same commenter requested that the phrase ''as calculated under paragraph (e)(1) or (e)(2)'' in the introductory paragraph of this section be replaced by the phrase ''as calculated consistent with the provisions of 19 CFR 146 Section 146.65''.

3. Another commenter stated that this section does not take into account that the Customs modernization provisions of the Act allow for periodic entry procedures for goods transferred from foreign trade zones to be expanded to a monthly timeframe instead of submission of entry-by-entry paperwork.

4. Two commenters stated that the examples provided in this section are convoluted and should be replaced. One commenter suggested that the examples should set forth the following facts: The imported products HTSUS classification; the rate of duty in the United States and in Mexico or Canada; dutiable value; and total value. Moreover, it was suggested that there should also be an example illustrating NAFTA treatment for a good departing a foreign trade zone for Mexico or Canada that combines both privileged and non-privileged foreign components and/or materials.

5. A commenter pointed out that there is no provision for mixed status merchandise (privileged and nonprivileged). This commenter also stated that there is no provision for zone restricted status merchandise. Since no production can occur in zone restricted status, if storage distribution were not included in the special actions under § 181.53, new special provisions for this status would not be necessary but should be mentioned.

6. Two commenters stated that the provision under section 202(a)(2)(A) of H.R. 3450 should be included in this section or it will be misinterpreted. These commenters believed that it should be interpreted only to mean that a foreign trade zone cannot be used to create a NAFTA originating good qualifying for NAFTA duty reduction. On a related subject, another commenter stated that this section does not address goods which are processed but not produced in a foreign trade zone (processed with non-originating materials). This commenter asked whether privileged foreign status would be permitted to ''lock in'' NAFTA preferential tariff treatment.

7. A commenter requested further clarification of the valuation methodology included in this section. This commenter further believed that weight should not be a factor other than when it is a factor for HTSUS purposes and therefore suggested using the language ''in its condition and HTSUS quantity.''

8. A commenter asked what the date of exportation is for NAFTA purposes.

9. A commenter requested that a definition of ''assessed'' be provided.

10. A commenter believed that the requirement for proof of exportation in this section is an unnecessary paperwork burden and suggested that a summary procedure similar to the one used in drawback should be established.

Customs response: The requirement for the collection of duties is set forth in Article 303(5)(a) of the Agreement.

The inclusion of paragraphs (e)(1) and (2) facilitate having the zone withdrawal NAFTA requirements in one part.

Whether a good is removed under the current weekly entry procedure or some other periodic entry procedure will not change the concepts set forth in the provision.

Creating complex examples will tend to obscure the principles sought to be illustrated: That is, which duty amounts are to be compared? The use of oil is appropriate since the principle is illustrated when privileged foreign status is claimed. There is no need for a separate example of merchandise consisting of nonprivileged and privileged status merchandise since the principles set in both examples would apply to such merchandise.

Export to Canada or Mexico of zone restricted status merchandise will not require an entry for consumption. It will require the goods so exported to be treated as a withdrawal for consumption for the sole purpose of computing whether there should be a reduction or waiver of duty.

The comment on section 202(a)(2) of the Act is beyond the scope of Subpart E. It deals with goods that are entered for consumption from a zone.

With respect to the use of weight as part of the valuation methodology, Customs does not concur with the suggested change because the provisions of this section follow the provisions of the Foreign Trade Zones Act (*see* 19 U.S.C. 81c(a)).

In the case of a shipment from the United States to Canada or Mexico, the date of exportation would be the date on which the goods leave the United States with evidence that the person sending those goods to Canada or Mexico intends to join them to the commerce of Canada or Mexico (*see* 19 CFR 101.1(k)).

The common meaning of the term ''assessed'' applies. As such, there is no need to provide for a separate definition that repeats the common meaning.

With respect to the proof of export burden under NAFTA, the comment fails to recognize that unlike drawback for shipments to non-NAFTA countries, the basis for entitlement to a refund, waiver or reduction in duty there depends entirely on the article and the amount of duty paid to Canada or Mexico. Also, the comment confuses the distinction between one drawback claim which may involve many exportations of merchandise on which duty was previously paid and specific withdrawals on which potential duty liability starts when that merchandise is withdrawn from a zone.

Section 181.53(e)(1)

Comment: A commenter stated that there are imported goods in foreign trade zones destined for Canada and/or Mexico under zone restricted status (19 CFR 146.44). This commenter stated that a general exemption from 19 CFR 146.63(b) should be provided for these goods because, for these goods to be entered or withdrawn for domestic consumption from an FTZ, § 146.63(b) provides that merchandise in zone restricted status may be entered for consumption only when the Foreign Trade Zone Board has ruled that the merchandise can be entered for consumption. To require rulings on such a routine matter will impose an unnecessary procedural burden on the Foreign Trade Zone Board, zone users and on Customs.

Customs response: The issue of goods in a zone restricted status will be addressed in the separate document regarding § 181.53 procedures to be published in the near future as mentioned above.

Section 181.53(e)(2)

Comment: A commenter took issue with the implication of this section that payments may be refunded only up to the limits established by § 181.44. Specifically, this commenter stated that under these regulations the exporter is required to make payments to U.S. Customs that might otherwise be unnecessary or larger in amount than is legally required for reasons of failure to meet the 60-day deadline. There should be an explicit provision that provides for the refund of these unnecessary or excessive payments in whole or in part when the evidence required by § 181.53 becomes available.

Customs response: There is no allowance for a time extension or a reconsideration of the initial determination in the NAFTA legislation. As regards available remedies for any ''unnecessary or excessive'' payments referred to by this commenter, this issue will be addressed in the separate § 181.53 document to be published as mentioned above.

Comment: A commenter stated that the 60-day period should be defined on a business month basis, not on a daily basis.

Customs response: As previously stated, the 60-day period was set by the three Governments in the Agreement. The purpose of the 60-day requirement was to enable the refund claimant to provide the Canadian or Mexican entry information so that the appropriate duty comparison could be made.

Comment: A commenter pointed out that separately defining duty calculations when treating exports from foreign trade zones as domestic entries provides for many questions and potentially disparate procedures. To diminish the likelihood for both these questions and procedures, this commenter suggested that this section be amended to reflect current FTZ regulations that cover entries for consumption.

Customs response: These procedural issues will be addressed in the separate § 181.53 document to be published as mentioned above.

Comment: A commenter alleged that there is a conflict in this section in that the section states that duty is assessed on privileged foreign status goods at the time of admission to the zone but in the example refers to duty assessed one month after admission.

Customs response: The commenter is correct. Accordingly, § 181.53(e)(2), as set forth below, has been modified by replacing the words ''at the time of its admission to'' with the words ''at the time privileged status is granted in''.

Section 181.53(g)

Comment: A commenter stated that the recordkeeping period is unclear, and therefore this commenter assumed that the normal recordkeeping periods apply to drawback claims and to import entries. Two other commenters stated that the 3-year period for record retention should be stated to avoid confusion.

Customs response: Under 19 U.S.C. 1508(c) and the regulations thereunder, the periods for record retention vary according to the type of transaction involved. With respect to warehouse withdrawals, foreign trade zone entries, and temporary importation bond transactions, the period is five years from the date of entry. With respect to drawback, the period is three years from the payment of drawback to the claimant.

Section 181.53(i)

Comment: A commenter stated that if this section relates to waiver or reduction of duty under duty deferral programs, it is inappropriate to state that ''* * * Customs shall reliquidate the NAFTA drawback claim'' because that issue already is addressed in § 181.52.

Customs response: The reference in this section is necessary because, while § 181.52 is limited to traditional drawback, § 181.53 includes all of the other contexts which are included in the term ''NAFTA drawback'' as defined in § 181.1(o) of the regulations.

Section 181.54

Comment: A commenter stated that the open-ended time period for U.S. Customs to verify Canadian and Mexican documentation creates indefinite contingent liabilities. This commenter suggested that a definite time period should be clearly indicated.

Customs response: Because the national laws differ and because the Agreement expressly provides for post-entry claims to be filed up to one year after entry, it is impossible to fix one time limit that will cover all situations.

Appendix to Part 181

Additional comments were submitted regarding the relationship between the Subpart E provisions and the provisions of Schedule X of the Appendix to Part 181. Those comments are addressed below in connection with the discussion of the Appendix comments.

Part 181, Subpart G (Origin Verifications and Determinations)

Section 181.72

Comment: In order to enable sureties to better protect their interests, one commenter stated that the regulations should be modified to require Customs to provide notice to the surety: (1) When Customs commences an origin verification under paragraph (a) involving the bond principal's goods; (2) when Customs makes an inquiry of the importer under paragraph (c); and (3) whenever the foreign producer or exporter or the U.S. importer fails to cooperate during an origin verification.

Customs response: Requiring such notices to sureties would impose an unnecessary burden on Customs. Accordingly, this is a matter more appropriate for the surety and its principal to resolve in the context of their contractual relationship.

Section 181.75

Comment: One commenter stated that the regulations should be modified to require Customs to provide notice to a surety when a negative origin determination is issued to the surety's bond principal under paragraph (b).

Customs response: A negative determination of origin does not necessarily result in a bond breach. Consequently, no useful purpose under these regulations would be served by obligating Customs to provide such notice to the surety. This is a matter that is best left to the private parties to resolve as a part of their contractual relationship.

Part 181, Appendix (Rules of Origin Regulations)

Section 2

Comment: The following comments were submitted on the definitions and interpretation set forth in section 2:

1. With regard to the definition of ''direct labor costs'', one commenter noted that many companies include direct labor fringe benefits as part of their burden, not as part of their direct labor costs. Thus, it would be more correct to indicate that the defined term ''may'' include fringe benefits in costs that are associated with employees who are directly involved in the production of a good.

2. In the definition of ''light-duty vehicle'', a commenter stated that the second reference to ''8702.10.60'' should read ''8702.90.60''.

3. One commenter noted that the definitions and interpretation of ''similar goods'' and ''similar materials'' are important parts in determining

eligibility for averaging costs over time where goods are produced in the same facility. Given this purpose, this commenter argued that these definitions and interpretation are unduly restrictive because goods and materials should qualify as ''similar'' for purposes of averaging if they simply serve identical functions. For example, if both automatic and manual transmissions are otherwise eligible for averaging, the fact that these two transmissions may not meet the ''similar characteristics and component materials'' definitional standard should not disqualify them from averaging. To accomplish this result this commenter suggested (1) that the two definitions should be revised to encompass goods and materials that ''although not alike in all respects, serve the same function'' and (2) that the interpretation should be eliminated because it suggests that only identical goods or materials qualify as ''similar''.

Customs response: With regard to the first comment, the commenter is correct that some companies may include direct labor ''fringe benefits'' as part of their overhead. However, for purposes of allocating direct labor, the United States, Canada and Mexico agreed that the cost of fringe benefits for direct labor must be included in the ''direct labor costs''. Salaries and fringe benefits for other than direct labor employees may be included as overhead and would be allocated according to the methods for overhead in Schedule VII.

Customs agrees that the second reference to ''8702.10.60'' should read ''8702.90.60'' in the definition for ''light-duty vehicle'', and the definition, as set forth below, has been modified accordingly.

Customs disagrees with the statement that goods should be considered ''similar'' if they merely serve identical functions. Averaging in section 6(15) for regional value content purposes is allowed so that a producer would not have to segregate the value of its materials and its production costs when there is very little difference in the materials and the production costs that would be allocated to goods for which NAFTA preference is to be claimed and to goods which are to be consumed in a domestic or non-NAFTA market. The use of the term ''similar'' provides the necessary balance between the intended benefit and the need for assurance that the averaged costs will have a real relationship to the goods. For example, although an electric motor and a gasoline motor may serve the same function in a model toy, averaged costs for non-originating materials and for net costs for these two motors would not provide a meaningful measure of the regional value content for each type of motor. When this issue was discussed trilaterally, it was agreed that the current reference to ''similar'' should not be changed.

Section 4

Comment: With regard to section 4(4) which sets forth exceptions to the change in tariff classification requirement for originating goods, one commenter stated that subparagraph (b)(iii) should be removed because it imposes a further qualification that is not reflected in the NAFTA provisions as set forth in General Note 12(b)(iv)(B), HTSUS. Specifically, whereas the NAFTA text simply refers to a case where the undivided tariff headings or the tariff subheadings for the goods ''provide for and specifically describe both the goods themselves and their parts'', the Appendix text at issue adds a further requirement that the non-originating materials and the good ''are not both classified as parts of goods under the heading or subheading'' under consideration. This commenter suggested that this limiting Appendix text is not required by either the language or the purpose of the NAFTA provision and that the ''specifically describe'' language of the NAFTA text could reasonably apply where the tariff provision is a ''parts'' provision because the minimum regional value content requirement would still apply.

Customs response: Customs disagrees. Note 22 to the NAFTA clearly states that the phrase ''specifically describes'' in Article 401(d) was intended to exclude situations in which both the good and the non-originating material are classifiable as ''parts'' in the heading or subheading under consideration.

Section 6

Comment: The following comments were submitted on the regional value content provisions of section 6:

1. With regard to subsection (14) which concerns non-allowable interest costs, one commenter agreed that the ''700 basis points'' standard (above which interest would not be countable toward total cost) was appropriately high. However, this commenter stated that, by referring to the yield on debt obligations of comparable maturities issued by the federal government of ''the country in which the producer is located'', this provision could result in disparate treatment of similarly situated companies located in different NAFTA countries. In order to avoid the possibility that two companies with similar interest costs on a debt of the same denomination may face different interest caps because their production occurs in different NAFTA countries, this commenter stated that subsection (14) should be modified to reflect linkage of the interest rate on a debt to the interest rate on government debt obligations of the country that issues the debt, so that the amount of allowable interest costs would depend on the denomination of the debt rather than the location of the company.

2. One commenter pointed out that in subsection (18) the reference to the period chosen in ''subsection (14)(a)'' should properly refer to ''subsection 15(a)''.

3. With regard to the examples contained in subsection (20), a commenter stated that Example 9 would be more clear if it explained that the tooling expensed on the books of Producer A is considered as non-originating because the material that the tooling produced is non-originating.

Customs response: With regard to the first comment, Customs agrees that disparate treatment may arise because the interest caps in the NAFTA countries may be different. However, in order to provide certainty and stability in this area, the United States, Canada and Mexico agreed to apply the interest cap of the NAFTA country in which the producer is located.

Customs agrees that the reference to ''subsection (14)(a)'' should properly read ''subsection (15)(a)'' in subsection (18) which, as set forth below, has been modified accordingly.

Although Customs agrees that Example 9 in section 6(20) could be more illustrative by addressing the treatment of the cost of tooling as a ''non-originating cost'' because it is included in the cost of the non-originating material produced by the tooling, Customs also notes that this example was merely intended to illustrate how the cost must be captured and that it cannot be counted twice. This commenter's suggestion, however, has been incorporated as a new Example 8 which has been added to section 7(18) (renumbered from 7(17)) as set forth below.

Section 7

Comment: With regard to section 7(17), one commenter pointed out that in the first paragraph of Example 4 the reference to ''Material A'' should read ''Material X''.

Customs response: This typographical error was corrected in a document published in the **Federal Register** on March 31, 1994 (59 FR 15047).

Section 9

Comment: With regard to Example 6 under section 9(10), one commenter

noted that although the example states that the producer designates the short block as an intermediate material, the example does not explain why this designation is made or what its effect might be on the origin of the part or the traced value in the vehicle.

Customs response: The purpose of Example 6 in section 9(10) is to illustrate section 9(9)(a) which provides that the designation of a self-produced material as an intermediate material is only effective with regard to the calculation of the net cost of the light-duty automotive good and, therefore, does not permit the producer to ignore the value of the traced materials for purposes of the calculation of the value of non-originating materials in the light duty automotive good. Customs agrees that, in this case, it may be clearer to state that the intermediate material qualifies as an originating material. Accordingly, Example 6, as set forth below, has been modified as follows: (1) By adding a sentence immediately after the second sentence in the first paragraph to read ''The intermediate material qualifies as an originating material''; and (2) by changing the last clause in the first sentence of the second paragraph to read ''even though the intermediate material is an originating material.''

Section 10

Comment: One commenter alleged that the language of section 10, and in particular the language of sections 10(1) and 10(2), is contrary to the wording of Article 403(2) of the NAFTA in that the Appendix language appears to require only tracing of the value of non-originating listed materials of the producer of the engine and transmission (the components), with two different results depending on the factual circumstances: (1) If the producer of the components is also the producer of the vehicle, then the tracing must be made through to the vehicle; or (2) if the producer of the components and vehicle are different, then the tracing stops at the production of the components. In other words, where the producer of the vehicle is not the producer of the component, that vehicle producer simply applies the normal rules of NAFTA Annex 401 to his product because he by definition does not ''use'' any material listed in NAFTA Annex 403(2) within the meaning of Article 403(2)(a) (it is the component producer who uses the listed material, that is, to produce the component, while the vehicle producer uses that component to produce the vehicle): thus, the component, not being a listed material, becomes the ''other material'' referred to in Article 403(2)(b) and is either originating or non-originating as far as calculation of the regional value content of the vehicle is concerned. This commenter, apparently concerned by the appearance of a narrower tracing rule under the Appendix text, stated that section 10 should be revised to reflect the correct, broader rule under the NAFTA text, that is, that the value of non-originating listed materials must be traced to the original-equipment engine and transmission and through them to the vehicle for purposes of calculating the regional value content of the vehicle.

In the event that the revision suggested above is not done, this commenter made the following additional recommendations regarding section 10:

1. As regards subsection (4) concerning the option of using the light-duty tracing rules for heavy-duty components, three suggestions were made. First, the materials covered by the subsection should be expanded to include listed materials and subcomponents. Second, if light-duty and heavy-duty vehicles are produced in the same plant, the producer should have the option of using the light-duty rules for calculating regional value content. Third, paragraph (b) should be removed because even if a producer knows the final use of the component, he should still have the option of using the light-duty rules.

2. As regards subsection (9)(c) which provides that section 10 does not apply to a subcomponent for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good, this commenter questioned the authority for this subsection and stated that, if there is no authority for it, then Situation 1 of Example 6 under subsection (10) is incorrect. Furthermore, this commenter suggested that if there is authority for subsection (9)(c), then there is a basis for setting up separate manufacturing companies to convert non-originating cost to originating for determining the regional value content of a subcomponent that crosses a border, because the tracing requirement is eliminated.

Customs response: Customs disagrees with the commenter's conclusion that the text of section 10 does not reflect Article 403(2) of the NAFTA which requires that the value of a listed non-originating material be ''traced'' through to any heavy-duty automotive good in which it is used. The rules in section 10(1) are cumulative. If a producer of a heavy-duty automotive good ''uses'' a listed non-originating material, then paragraph (a), (b) or (c) would apply, depending, of course, on the specific facts. If a producer uses an automotive component assembly, automotive component or subcomponent, then paragraph (d) or (e) would apply, resulting in the ''tracing'' of either the values of all non-originating materials that were incorporated into that material acquired and used by the producer or the entire value of that material acquired and used by the producer. The structure of section 10(1) eliminates any doubt that, regardless of the stage in which a listed non-originating material is used, the value of that listed material must always be included in the value of non-originating materials when calculating the regional value content of any heavy-duty automotive good into which the listed material is subsequently incorporated.

Customs disagrees with this commenter's proposals for redrafting section 10(4) because the regulation reflects the relevant NAFTA provisions and the intent of the Parties. First, Article 403(2), which provides the rule for determining the value of non-originating materials in heavy-duty automotive goods, does not apply to listed materials or to subcomponents. Second, Article 403 is very clear in that it provides a specific rule for light-duty vehicles and a specific rule for heavy-duty vehicles. Third, with the exception of the situation in which averaging is permitted under Article 403(4) (see section 12 of the Appendix), Article 403(2) does not provide for the alternative use of the light-duty tracing rule for heavy-duty automotive components. In view of the fact that it may be impossible to identify interchangeable heavy-duty components and light-duty components that are produced in the same plant, the United States, Canada and Mexico agreed that the regulations should specifically address this situation.

With regard to the comment on section 10(9)(c) that there is no authority to exclude subcomponents from the regional value content calculation in section 10, Customs simply notes that the special rule set out in Article 403(2) of the NAFTA is for vehicles and components. Furthermore, the use of a listed non-originating material in the production of a subcomponent does not defeat the ''tracing'' requirement applicable to heavy-duty automotive goods. The regulations set out in section 10(1) make it clear that the value of a listed non-originating material will always be traced through to any heavy-duty automotive good into which it is incorporated. For example, section

10(1)(d) requires the ''tracing'' of a listed non-originating material even if it was used in the production of an originating subcomponent.

Section 13

Comment: The following comments were submitted on the special regional value-content requirements contained in section 13:

1. Two commenters referred to subsection (4) which concerns the averaging period for calculation of regional value content for vehicles of a new plant or a refit plant.

One of these commenters noted that paragraph (a)(i) would allow a producer to use launch and start-up cost for a period up to 23 months as originating content in computing the regional value content. This commenter suggested that the cost incurred from the first prototype date to the end of the fiscal year in which the first prototype was produced should be used for the regional value content calculation for the vehicles produced in the first fiscal year.

The second commenter concluded that subsection (4) allows a motor vehicle producer to elect one of the following three periods over which regional value content is calculated by averaging: (1) Paragraph (a)(i) allows averaging from the date of the production of a prototype through the end of the first fiscal year that begins after that date, thus allowing the producer to roll the first partial year into the first full fiscal year for averaging purposes; (2) paragraph (a)(ii) allows averaging over any fiscal year that begins after production of a prototype and ends before the end of the special regional value content period (the 5-year or 2-year period specified in section 13(2)); and (3) paragraph (a)(iii) allows averaging over part of a fiscal year up to the last day of that 5-year or 2-year special regional value content period. However, this commenter stated that the exact time periods covered by these three alternative averaging periods are not clear in the Appendix text as written. In addition, this commenter suggested that the end of an averaging period involving a special regional value content period should coincide with the end of the producer's fiscal year because significant accounting problems will arise if the averaging period cuts off before the fiscal year end. Thus, for example, a 5-year period under section 13(2) would allow averaging for full five fiscal years plus that portion of a year beginning with the date of production of the first qualifying prototype.

2. One commenter noted that subsection (5)(h) requires that the document in which the election to average is made must be filed at least 10 days before the first day of the producer's fiscal year, or such other shorter period that the concerned customs administration may accept. This commenter recommended that this provision be amended to specify ''10 days before the shipment of the first vehicle intended for sale''.

Customs response: Customs agrees that section 13(4)(a)(i) would permit a producer to average over a period of up to 23 months. In the interest of aligning the averaging period with the period for which the special RVC is effective for production from a new plant or a refit plant, it was considered to be more practical to combine the initial ''stub'' period with the first full fiscal year. Paragraphs (a)(ii) and (a)(iii) provide for the subsequent full fiscal years and for the final stub period, if any.

Concerning the second comment on section 13(4)(a), Customs first notes that the commenter has referred to subparagraphs (i), (ii) and (iii) as ''alternative averaging periods''. This is not correct. One, two or all three of these subparagraphs could apply in any given situation, depending on the length of the special RVC period and the relationship of the first year of that period to the beginning of the producer's fiscal year.

In response to the remainder of this commenter's remarks, Customs notes that under Article 403(6), the ''years'' in the periods for which a special RVC applies to vehicles of a new plant or vehicles of a refit plant are not necessarily coterminous with the fiscal year of a producer. Under Article 403(6) the ''year'' in the special RVC period begins when the first prototype motor vehicle is produced in the new or refit plant. Under Article 403(3), the ''year'' in the averaging period for the RVC calculation is the fiscal year of a producer. It was the intent of the drafters of the regulations to align the averaging period with the special RVC period in order to allow a producer to obtain the maximum benefit from the statutory 5-year or 2-year special RVC period. Customs has no authority to extend or reduce these NAFTA periods which are also reflected in section 202(c)(6) of the Act.

As regards the comment on section 13(5), Customs does not disagree entirely with the idea behind the commenter's proposal. Inasmuch as the first averaging period would not include the full fiscal year (if the first prototype of a motor vehicle is produced in a plant on a date after the beginning of the producer's fiscal year), it would appear reasonable to allow the producer to file at least 10 days before the beginning of the period which will constitute the first period in which the producer must average. However, the United States, Canada and Mexico agreed that the election should be filed at the same time that other elections to average under section 11 must be filed. The requirement does not impose an unnecessary hardship on a producer because the producer will have the requisite knowledge as to when such prototypes will be produced.

Section 15

Comment: One commenter made the following observations regarding section 15 which concerns the inability of a supplier, exporter or producer to provide sufficient information during a verification of the origin of a good:

1. Whereas section 15 sets forth alternative means to verify the origin or value of a material used in the production of a good when the person from whom the producer obtained the material is unable to provide sufficient verifying information, when a producer supplies verifying information the relevant customs administration should accept it. Moreover, the customs administration should have the obligation to explain in writing any refusal to accept the offered information supporting the origin of the material.

2. While section 15 properly provides that the customs administration shall take into consideration whether the customs administration of the importing country issued an advance ruling under Article 509 of the NAFTA which concluded that the material is an originating material, a provision should be added to authorize a ''retroactive ruling'' that a material is an originating material (for U.S. purposes, this could be done as a request for internal advice as provided for in Part 177 of the Customs Regulations). A producer often learns of a supplier's financial weakness in advance of problems that would make it impossible to obtain the information necessary to verify the origin of a material, and a ''retroactive ruling'' provision would allow the producer to obtain a ruling that would cover prior periods. The procedure for obtaining such a ruling should be consistent with the advance ruling provisions, except that the supplier of the material should provide exact historical data, including exporter's certificates of origin, rather than projected costs. Addition of a retroactive ruling provision would also reduce the need to rely on the other section 15

alternative means to verify the origin of a material.

Customs response: With regard to the first comment, Customs notes that subsection (1) of section 15 provides for factors to be considered by a customs administration where, during a verification of a good, a *producer of a material* is unable to supply sufficient verifying information for reasons beyond that person's control. The regulation thus contemplates the situation in which a verification requires information from the producer of the material, perhaps, for example, in the form of that person's books or records. It is unclear what the commenter's reference is to accepting the information offered. Of course, nothing in section 15 precludes the customs administration from considering information from the producer of the good or from any other source; rather, the section enumerates certain sources of information which may provide relevant information. Normally, of course, the verification process proceeds by seeking information from the producer of that good and, if necessary, from the producer of a material. If the customs administration is satisfied with respect to the origin of a material by virtue of information provided by the producer of the good, then presumably the situation identified in section 15 will not occur. The NAFTA countries did not perceive the need to provide for an obligation to accept proffered information or to explain any unwillingness to do so. Customs does not believe that any amendment in this regard is necessary or appropriate.

As regards the second comment, the commenter accurately observes that section 15(1)(a) provides that, among the factors to be considered, is whether an advance ruling under Article 509 of the NAFTA has been issued with respect to the material. The commenter appears to be seeking a separate procedure through which the producer of the good could obtain a decision with respect to the origin of a material which would presumably affect the origin determination with respect to the good. Such a procedure is intrinsic to the verification process. Thus, if the outcome of the verification depends on the origin of the material, it would be expected that the producer of the good would provide such information in its possession to demonstrate where the material originated. The customs adminstration would then apply the conclusion to the goods subject to the verification. Accordingly, it does not appear that there is any need for the regulations to be amended in order to meet the concern identified by the commenter.

Schedule III

Comment: One commenter stated that the valuation provisions of the interim regulations should be reviewed and revised to more accurately reflect the terms of General Note 12(c), HTSUS, which specifically refers to the legal standards set forth in section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a). This commenter cited the following specific examples in this regard:

1. Under section 3 of Schedule III, subsection (4) provides for the acceptance of transaction value between related parties when the producer demonstrates ''that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).'' However, the ''test value'' referred to in subsection (5) is limited to ''the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.'' This commenter stated that this is much more limited than the comparable statutory provision (19 U.S.C. 1401a(b)(2)(B)) that applies under General Note 12(c), HTSUS, which includes other ''test values'' that can be used to demonstrate the acceptability of the transaction value between related parties.

2. Also under section 3 of Schedule III, subsection (8) appears to require that the ''test value'' has been ''previously accepted by the customs administration''. This commenter stated that this requirement is not contained in the U.S. valuation statute referred to in General Note 12(c), HTSUS.

Customs response: Schedules II, III and VIII of the Appendix to Part 181 of the interim NAFTA regulations were based on the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the ''Customs Valuation Code,'' or ''Code''), rather than on the U.S. valuation statute (19 U.S.C. 1401a), or the valuation statutes of Canada or Mexico. Since the Code is a neutral document common to all three NAFTA parties, it was therefore decided that the Code should form the basis of that part of the regulations that is concerned with how to determine regional value content under the transaction value method.

In regard to the specific points raised by the commenter, the test value referred to in Schedule III, section 3(5), is based on the transaction value of identical or similar goods since the purpose of the test value is to establish whether a transaction value between a related producer and seller, determined in accordance with Schedule II, is acceptable. Since transaction value is the only method of determining the value of a good under Schedule II, there is no justification for any alternative bases of determining test values as there is under the Code. Just as test values under the Code must be based on a value previously accepted by a customs administration, so too NAFTA requires that a test value shall have been previously accepted.

Schedule VII

Comment: The following comments were submitted in regard to the reasonable allocation of costs provisions contained in Schedule VII:

1. Two commenters referred specifically to sections 3(1)–(3) which concern methods used for internal management purposes by a producer of a good to reasonably allocate to that good direct material costs, direct labor costs or overhead.

One of these commenters noted that although the text in each case sets forth the criterion of ''benefit, cause or ability to bear'' for purposes of determining the reasonableness of the method used, the elements of this criterion are neither defined anywhere in the Appendix nor further explained in the examples under Schedule VII. This commenter suggested that: (1) This criterion should be eliminated, on the theory that a cost allocation method used for a (true) internal management purpose (that is, as stated in section 7 of Schedule VII, not solely for the purpose of qualifying a good as an originating good) should satisfy the reasonableness requirement; or (2) at the least, a definition or explanation of ''benefit, cause or ability to bear'' should be included in the final Appendix texts.

The second commenter expressed similar views and stated that the following interpretation of section 3 should be expressly affirmed in the final Appendix text: (1) That section 3 requires a customs administration to accept an allocation method that is used by the producer of a good for an internal management purpose, unless the allocation method is determined to be manifestly unreasonable; and (2) that a customs administration bears a heavy burden to disqualify any allocation method based on lack of relation to the criterion of benefit, cause or ability to bear because an allocation method that is used for internal management purposes is presumptively reasonable since a company is unlikely to rely on an allocation method for internal

decision-making if it does not meet the benefit, cause or ability to bear criterion. Consistent with this interpretation, this commenter further suggested that section 3 should be revised to reflect a pure internal use test because the ''reasonableness'' requirement, based on the benefit, cause or ability to bear criterion, does not add meaningfully to the rule, injects an unnecessary degree of subjectivity into the cost allocation approval process, and is adequately provided for by the terms of section 7 of Schedule VII. Finally, this commenter recommended that, at a minimum, the following definitions be added to the Appendix to clarify the meaning of the ''benefit, cause or ability to bear'' criterion:

Benefit or benefits received: This criterion identifies the beneficiaries of the outputs of the cost pool and allocates the costs in proportion to the benefits received.

Cause or cause and effect: This criterion identifies the outputs of the cost pool (any grouping of individual costs) and allocates the costs in proportion to the services provided.

Ability to bear: This criterion advocates allocating costs in proportion to the cost objective's ability to bear.

2. With regard to section 6, one commenter stated that paragraph (d) should be eliminated so as to permit allocation of a gain or loss from the sale of a capital asset consistent with Generally Accepted Accounting Principles (GAAP) because, under GAAP, a gain or loss from the disposal of an asset constitutes a legitimate element of the total cost of the asset. Thus, a gain or loss on depreciation does not represent an extraordinary cost, and any write-off on sale or disposal of an asset should be reflected in total cost.

3. One commenter argued that section 7 should be eliminated for several reasons. First, section 7 is ambiguous when taken in context with section 4, which applies when an allocation method does not satisfy section 3 and which requires use of an allocation method that is reasonable based on the criterion of benefit, cause or ability to bear. The ambiguity exists because, if an internally used allocation method is deemed not to satisfy the reasonableness requirement in section 3 by virtue of the restriction in section 7, section 4 requires the producer of a good to use an alternative allocation method that does meet the benefit, cause or ability to bear reasonableness criterion. Given the rejection of the internally used allocation method under section 3, the only solution under section 4 is to use an allocation method that is solely for the purpose of qualifying a good as an originating good. This is precisely what section 7 is designed to prevent. Second, section 7 is unnecessary because, so long as an allocation method meets the reasonableness test under the benefit, cause or ability to bear criterion, the purpose of the allocation method is irrelevant. Finally, section 7 is redundant given the non-qualifying operations provision in section 17 of the Appendix as regards any production or pricing practice the object of which is to circumvent the Appendix. This commenter also suggested that if section 7 is to be retained, it should, at a minimum, provide specific and objective criteria for determining whether a cost allocation method is used solely to qualify a good as an originating good.

Customs response: Customs disagrees with the commenters' suggestions that the criteria of ''benefit, cause or ability to bear'' are not necessary in section 3, or, in the alternative, that the terms should be defined. The terms are recognized principles used in the cost accounting industry. They are broad principles that provide a measure by which Customs can determine the reasonableness of a cost allocation method for an internal management purpose. Customs does not dispute the fact that most producers, for one or more internal management purposes, are likely to rely on allocation methods that satisfy one of these criteria. The regulation, however, is intended to capture all situations and, therefore, must necessarily identify criteria against which the regulatory requirement is to be measured.

Concerning the comment on section 6(d), Customs agrees with the commenter's analysis of the treatment, for cost accounting purposes, of the gain or loss from the sale of a capital asset. However, in this case the Parties agreed that, for purposes of a ''reasonable'' allocation of costs in the calculation of total cost, such gains or losses are not reasonably allocated to a good.

The commenter's remarks concerning section 7 are understandable because the criteria of ''benefit, cause or ability to bear'' are used in both sections 3 and 4 to determine whether a cost allocation is reasonable. Nevertheless, Customs does not agree that section 7 should be eliminated. The structure of Schedule VII requires that, under section 3, an allocation method for an internal management purpose is to be used if it is a reasonable allocation. However, section 7 states that any allocation method for an internal management purpose will, on its face, not be accepted as ''reasonable'' if it is solely for the purpose of qualifying a good as an originating good. If costs are not reasonably allocated under section 3, then the producer is required to comply with section 4. Section 4 provides for the use of a method set out in the addenda to Schedule VII and/or any method based on one of the criteria of benefit, cause or ability to bear.

Schedule VIII

Comment: With regard to Schedule VIII (value of materials), one commenter raised an issue concerning section 3 which operates as an exception to the general rule that the transaction value of a material is unacceptable if, among other things, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material. Referring specifically to the first sentence of subsection (7) which states that ''[s]ubsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1)'', the commenter suggested the following interpretation thereof: the customs administration of the NAFTA country into which a good is imported is required to accept (and thus may not audit) the transaction value of a material used in the production of the good if the customs administration of the country into which the material was imported (and where the material was incorporated into the exported good) approved that transaction value during a valuation audit performed on the material when it was imported. This commenter stated that because section 3 is ambiguous, the provision should be clarified to reflect this interpretation. In addition, this commenter recommended that section 3 be modified to expressly state that the customs administration attempting to verify the value of a good that incorporates a material must accept any pre-approval or advance ruling concerning the value of the material by the customs administration of the country into which the material was first imported.

Customs response: For the purposes of Schedule VIII, unless otherwise stated, the term ''customs administration'' is defined as ''the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported.'' Section 3 sets forth the basis for

determining whether the transaction value of a material determined under section 2(1) is acceptable. One basis under section 3 for validating a transaction value of a material is for a seller or producer to demonstrate to a customs administration (that is, a customs administration as defined above) that the transaction value determined in accordance with section 2(1) closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located. Accordingly, the regulations permit the customs administration of one NAFTA country to accept the transaction value of a material if it closely approximates a test value determined by the customs administration of another NAFTA country. However, this must be demonstrated to the satisfaction of the customs administration (as defined for purposes of Schedule VIII), and there is no requirement that a customs administration must accept any test value put forward by a particular seller or producer.

Schedule X

Comment: The following comments were submitted regarding Schedule X, principally in the context of the drawback and duty-deferral program provisions of Subpart E of Part 181:

1. With respect to the commingling of fungible goods and the inventory methods that are allowable to determine the origin of materials, one commenter stated that Schedule X excludes identification procedures (inventory methods) that have been allowed in drawback such as ''lower to higher'', ''higher to lower'' and blanket identification. This commenter also stated that FIFO is administratively unworkable and economically unfeasible for most companies, in part because the association of entry numbers with imported part numbers which is needed under FIFO is too detailed. On this same subject, two commenters stated that Schedule X is unworkable and not consistent with the intent of Congress which, as stated in Ways and Means Report 103–361, was ''* * * to provide sufficient flexibility in the inventory accounting methods for such goods to make them administratively workable for industry.'' Another commenter stated that the words ''completely fungible'' should be changed to ''commercially interchangeable'' because of the redefinition of the term ''fungible'' in the Customs modernization provisions of the Act.

2. Three commenters raised the issue of commingled fungible goods that are 100 percent imported, two of them stating that, in such a case, entries for goods (within the appropriate time period) may be designated under the inventory averaging procedure and that this is supported by the legislative history relating to the Customs modernization provisions of the Act. These commenters also stated that, in such circumstances, the ''high-to-low'' method or any other Customs approved accounting method may be used.

3. Another commenter stated that the Appendix should not be used for the purposes of determining inventory methods because the Appendix is generally for rules of origin purposes. This commenter also stated that the inventory methods used to support a same condition drawback claim should be set forth separately because Article 303 of the NAFTA is not subject to the uniform regulations requirement of Chapter 5 of the NAFTA.

4. Two commenters pointed out that Customs should give some thought to companies that must keep extremely detailed records such as those dealing in footwear, eye wear, finished clothing and other articles that are produced in a wide variety of styles, sizes and colors. This commenter stated that the requirements of Schedule X are so onerous that companies that produce or distribute these types of articles will not be able to export to Canada and Mexico for lack of ability to comply with these requirements. This commenter also suggested that Customs should address the area of former 19 U.S.C. 1313(j)(2) substitution drawback claimants in a NAFTA context. In this regard, the commenter stated that, assuming such claimants meet the requirements for drawback under 19 U.S.C. 1313(j)(1), Customs should recognize that they do not need to resubmit any applications for purposes of obtaining drawback under 19 U.S.C. 1313(j)(1) in a NAFTA context but rather would simply file the claims in accordance with the applicable regulations. This commenter, after stating that Customs officials from the Office of Trade Operations have indicated that the Schedule X inventory procedures will be applied to all 19 U.S.C. 1313(j)(1) drawback claims, expressed the view that Schedule X should apply only in the context of Part 181.

5. A commenter pointed out that §§ 191.141(e) and 191.22, taken together, also provide for storage and identification methods and provide more options for approved accounting methods than Schedule X does. For example, these sections allow use of ''high-to-low'', but Schedule X does not. This commenter therefore suggested that the provisions of § 191.22 should be used instead of Schedule X.

6. Two commenters stated that the inventory methods authorized for foreign trade zone procedures (§ 146.23) should be included in Schedule X in order to avoid the need for multiple inventory systems as the price for using both trade programs. These commenters cited, as an example that these two provisions are not in agreement (at least with respect to terminology), the fact that Schedule X calls for a specific identification method whereas § 146.23 requires a unique identification number. If these two requirements are the same, these commenters suggested that the regulatory text should state that this is the case.

7. Another commenter asked whether LIFO and average methods are acceptable for drawback and, if so, whether they can be used on exports to non-NAFTA countries. If not, this commenter asked whether claimants must switch to FIFO or maintain different accounting methods for the same goods.

Customs response: These comments principally address an allegedly impractical and unworkable application of the inventory management methods of Schedule X as required under § 181.45(b)(2)(i). In sum, the commenters argue that the Customs-approved methods in §§ 191.121(e) and 191.22 (drawback) and in § 146.23 (foreign trade zones) of the Customs Regulations should be allowed in place of the methods set forth in Schedule X.

Customs disagrees with these comments to the extent that they propose an expansion of the allowable methods for determining which commingled goods are eligible for full drawback under § 181.45(b). Schedule X was promulgated under NAFTA Article 511 and applies, by operation of NAFTA Article 303(6)(b), to imported goods which have been commingled with fungible goods and which are exported to Canada or Mexico in the same condition as when imported into the United States.

Nevertheless, the number of comments submitted on this point suggests that the text of § 181.45(b)(2)(i) could be improved. Accordingly, § 181.45(b)(2)(i), as set forth below, has been modified to more clearly reflect the intended effect of Article 303(6)(b), that is, as a narrow exception to the broad operation of Article 303 which restricts drawback to the amount determined under the ''lesser of'' rule. Beginning in 1996 (for exports to Canada) and in 2001 (for exports to Mexico), same condition substitution drawback will be prohibited altogether. The only

exceptions are for the goods described in Article 303(6). Thus, ''same condition'' drawback for imported goods commingled with fungible goods is allowed, but only to the extent that the identity of the imported goods is determined by use of one of the approved inventory management methods set forth in Schedule X.

Additional Changes to the Regulations

In addition to the changes to the interim regulatory texts discussed above, this document modifies the interim texts to set forth changes that are necessary (1) to reflect subsequent trilateral discussion and agreement regarding regulatory standards pursuant to Article 511 of the NAFTA or (2) based on an independent review of the interim texts within Customs. These changes are discussed below.

Changes Pursuant to Trilateral Discussions

Subsequent to the publication of the interim regulations in T.D. 94–1, and in keeping with the principle of ongoing cooperation in the implementation and administration of the NAFTA as provided for in Section F of Chapter Five of the NAFTA, representatives of the United States, Canada and Mexico held further meetings which resulted in agreement regarding (1) use of the definition of ''conspicuous'' as set forth in Annex 311 of the NAFTA, (2) the adoption of an additional standard covering denial of preferential tariff treatment based on a failure to provide certain documentation in transshipment cases, (3) the adoption of additional standards for origin verifications, (4) the adoption of additional standards to be applied with regard to requests for advance rulings under Article 509 of the NAFTA, and (5) the modification of the substantively verbatim texts implementing the rules of origin provisions of Chapter Four of the NAFTA. The agreed changes, as reflected in the final regulatory texts set forth in this document, are summarized below.

Definition of ''Conspicuous''

During the trilateral discussions it was pointed out that the interim amendments to Part 134 did not set forth the definition of ''conspicuous'' contained in the country of origin marking provisions of Annex 311 of the NAFTA. Accordingly, § 134.1 has been modified, as set forth below, by the addition of that definition as a new paragraph (k). Customs believes that this definition is appropriate for both NAFTA and non-NAFTA contexts since the NAFTA definition reflects existing Customs practice and regulatory standards (see, for example, the last sentence of § 134.41(b)).

Failure to Provide Documents in Transshipment Cases

The new standard regarding shipping documents provides that preferential tariff treatment may be denied to an originating good if the good is shipped through or transshipped in a non-NAFTA country and the importer does not provide, upon request, copies of the customs control documents showing that the good remained under customs control while in that non-NAFTA country. Section 181.23, as set forth below, has been modified by the addition of a new paragraph (b) to reflect this new standard, and § 181.31 (regarding post-importation claims) and § 181.71 (regarding origin verifications), as set forth below, have been appropriately modified as a consequence of the adoption of this new standard.

Origin Verifications

The Parties agreed to a new standard for origin verifications that permits verification of the applicable rate of duty applied to an originating good in accordance with NAFTA Annex 302.2 and determination of whether a good is a qualifying good for purposes of NAFTA Annex 703.2. Accordingly, § 181.72 as set forth below has been modified by the addition of a new paragraph (a)(2) to reflect this standard.

In addition, the new standard for origin verifications provides that a questionnaire may be completed, at the option of the exporter or producer, either in the language of the importing country or in the language of the country in which the exporter or producer is located. Paragraph (a)(3)(ii) (paragraph (a)(2)(ii) in the interim texts) of § 181.72, as set forth below, has been modified accordingly.

Requests for Advance Rulings

The new trilaterally-agreed standards regarding advance ruling requests concern the information required to be submitted with the request and therefore only affect § 181.93 of the interim regulations. The substantive changes reflected in § 181.93, as set forth below, are as follows:

1. In paragraph (b)(1), which concerns general information to be included in the request, the following requirements have been added: identification of the specific subject matter of the request; inclusion of a statement regarding the accuracy and completeness of the information submitted; inclusion of the name and address of the exporter and producer of the good where the importer is the requesting party; inclusion of the name and address of the producer and importer of the good where the exporter is the requesting party; inclusion of the name and address of the exporter and importer of the good where the producer is the requesting party; submission of copies of advance rulings or other rulings issued to the requesting party by Customs regarding the tariff classification of the good, if relevant to the issue in the advance ruling request; and, if no ruling on tariff classification was issued to the requesting party, sufficient information to enable Customs to classify the good if relevant to the issue in the advance ruling request.

2. Paragraph (b)(2)(ii), which concerns tariff change rulings, has been changed by designating the interim text as subparagraph (A) in order to facilitate the addition of a new subparagraph (B) setting forth information that must be in an advance ruling request which involves an origin issue requiring an assessment of whether materials undergo an applicable change in tariff classification.

3. In paragraph (b)(2)(iii), which concerns rulings on regional value content, the following changes have been made: in the first sentence, the words ''or under both methods'' have been added to reflect the fact that satisfaction of a regional value content requirement may involve use of both the transaction value method and the net cost method as well as the fact that a ruling on both issues may be sought; the second sentence, which sets forth the information to be submitted for purposes of the transaction value method, has been changed by inserting specific references to relevant provisions of the Appendix to Part 181, by adding a requirement for information sufficient to calculate the value of each material for which the origin is unknown and that is used in the production of the good, by adding a requirement for specific information regarding each material that is claimed to be an originating material and is used in the production of the good, and by adding a requirement specifying information to be submitted where the advance ruling request involves an issue as to whether the transaction value is acceptable with respect to the good; the third sentence, which sets forth the information to be submitted for purposes of the net cost method, has been changed by inserting specific references to relevant provisions of the Appendix to Part 181, by adding references to lists of all ''product, period and other'' costs and of all ''excluded''

costs, by limiting the required materials value information to non-originating materials or materials for which the origin is unknown and that are used in the production of the good, and by requiring a statement regarding the period over which the net cost calculation is to be made; and a new sentence has been added at the end to limit the information required to be submitted where the advance ruling request concerns only the calculation of an element of a regional value content formula.

4. A new paragraph (b)(2)(iv), with the heading ''NAFTA rulings on producer materials'', has been added to specify information that must be submitted where the advance ruling request either involves an issue with respect to an intermediate material or is submitted by a Canadian or Mexican producer of a material and concerns only the origin of such material.

5. Paragraph (b)(5), which requires the submission of information regarding prior or current transactions, has been reconfigured to facilitate the addition of references to information regarding the following: judicial or quasi-judicial review in Canada or Mexico; a verification of origin performed in the United States, Canada or Mexico; an administrative appeal in the United States, Canada or Mexico; a request for an advance ruling in the United States, Canada or Mexico; and the status or disposition of any current or prior judicial or quasi-judicial review, verification of origin, administrative appeal, or advance ruling request.

Chapter Four Rules of Origin

With regard to the substantively verbatim regulatory texts covering the rules of origin provisions of Chapter Four of the NAFTA, which were set forth in the interim regulations in the Appendix to Part 181, the trilaterally-agreed changes thereto concern clarifications of ambiguous provisions, corrections in grammar or punctuation and, in certain cases, textual additions to remedy instances in which the original trilateral text was incomplete or the intent of the Parties was not adequately expressed. These changes, which are incorporated in the text of the Appendix to Part 181 as set forth below, are as follows:

Calculation of Total Cost

Calculation of total cost is required for purposes of the *de minimis* rule in section 5, the net cost method in section 6 and the valuation of intermediate materials in sections 7 and 10. However, references in the original trilateral texts to the calculation of total cost were incomplete in sections 5, 7 and 10. Therefore, in order to make it clear as to what costs are included in the ''total cost'' as that term is used in the trilateral texts, new subsection (6) has been added to section 2, new sections 5(10), 7(7) and 10(9)(f) have been added, and consequential changes have been made to the following provisions in sections 5, 6 and 7: sections 5(9) (a) and (b) (sections 5(8) (a) and (b) in the interim texts); section 6(12); and sections 7(6)(a) and (b).

Effect of Choice to Average

Throughout the trilateral texts there are references to ''averaging'' for purposes of determining the net cost of goods, the value of materials or the value of traced materials. Whenever a producer makes the choice to average, the period over which that producer averages cannot be changed, and the duration of the choice to average must extend to the end of the fiscal year of that producer. Although these requirements were implicit in the original trilateral texts, it became apparent that it was necessary to state them explicitly. Therefore, new subsections (7) through (10) have been added to section 2, and the following changes have been made to the related provisions in sections 6 and 12 and in Schedule X: revision of section 6(15)(a)(ii); addition of new sections 6(18) and 6(19) and redesignation of interim sections 6(18) and 6(19) as 6(20) and 6(21); in sections 12(5) (a) and (b), addition of the words ''that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period''; addition of new sections 12(6) through 12(9) and redesignation of interim sections 12(6) and 12(7) as 12(10) and 12(11); and revision of sections 3 and 12 of Schedule X.

Averaging For De Minimis and Accumulation

The original trilateral texts failed to provide specifically for the use of averaging in determining the value of the non-originating materials in subsections (1) and (5) of section 5 (*de minimis*), and in determining the net cost and value of non-originating materials in subsection (2) of section 14 (accumulation). To provide guidance on the use of averaging in situations involving *de minimis* or accumulation, new subsections (11) and (12) have been added to section 5 and new subsection (3) has been added to section 14. Consequential amendments, such as redesignation of subsections and internal references, have also been made.

Section 4

Section 7(10) provides for the situation in which a self-produced material may be designated as an intermediate material if it is used in the production of a good that is subject to a regional value content requirement. It was not clear under the original trilateral texts that a self-produced material, used in a good which is not subject to a regional value content requirement, could be considered as a material for purposes of the NAFTA rules of origin. Accordingly, a new subsection (8) has been added to section 4 in order to make it clear that a self-produced material may be considered as a material used in the production of a good even if the good is not subject to a regional value content requirement. Such a self-produced material must have either originating or non-originating status under the NAFTA rules of origin, and that status will influence the application of a particular NAFTA rule of origin to the good produced from that material. In addition, a new subsection (9) has been added to section 4 setting forth an example to illustrate such a situation.

Section 6

Article 403 of the NAFTA specifically provides a producer with the option to use an averaging method for calculating the net cost for automotive goods, and sections 11, 12 and 13 of the trilateral regulations implement the specific provisions of Article 403 for automotive goods. The NAFTA does not specifically provide for averaging with respect to any other goods. However, because it was recognized that in many situations non-automotive producers will have to use standard or projected costs to calculate the net cost and the value of non-originating materials in their goods, an averaging method was included in section 6(15) of the trilateral texts in order to permit, in a commercially practicable manner, averaging of the values required under the net cost method for non-automotive goods. The introductory text of section 6(15) as set forth in this document has been amended to more clearly state the intent of the Parties, that is, that the regional value content calculation for certain automotive goods may not be calculated by the ''averaging'' permitted under section 6(15). Although this exclusion of automotive goods from the application of section 6(15) appears to be a limitation, this is not the case. The category of goods for which averaging may be chosen under section 6(15) is restricted to goods which are ''identical or similar'' as defined in section 2,

whereas the various categories of automotive goods for which averaging may be chosen under section 11, 12 or 13 are not so restricted. Thus, this amendment will provide greater textual clarity but will have minimal adverse effect on producers of automotive goods for which averaging may be chosen under section 11, 12 or 13.

Section 7

Under Article 402(9) of the NAFTA, the value of materials is either the transaction value (as defined in Article 415) or, if there is no transaction value or the transaction value is unacceptable, the value determined in accordance with the Articles 2 through 7 of the Customs Valuation Code. Section 7(1) and Schedule VIII of the trilateral regulations implement the NAFTA with respect to the valuation of materials. Section 7(1) states that, if the producer of the good is the importer of a material, the value of that material for NAFTA purposes is the customs value. However, ''transaction value'' or other value used as the basis for the customs value may not, in fact, reflect the transaction value ''of the producer'' or other applicable value as defined in the NAFTA. Section 7(2) as set forth in this document has been revised to make it clear that if the customs value for the materials referred to in section 7(1) was not determined in a manner consistent with Schedule VIII, then the customs value may not be used as the value of the material: in such a case the value of the material must be determined according to Schedule VIII. In addition, in order to illustrate this principle, a new Example 1 has been added in section 7(20) (section 7(17) in the interim texts) and interim Examples 1 through 6 have been renumbered as Examples 2 through 7. For the same reasons, similar references to the use of ''customs value'' as the value of a material have been clarified by revising sections 9(3) and 10(3) and section 1(2) of Schedule VIII.

Paragraph (b) of section 7(12) in the original trilateral texts (renumbered in this document as section 7(13)) could have been incorrectly interpreted as requiring that self-produced packaging materials or containers be valued under subparagraphs (i) or (ii). Under such an interpretation, the value of a self-produced material would always have to be treated as a non-originating value if the self-produced material were a non-originating material. However, under the NAFTA a producer is not required to treat a self-produced material as a material or to designate a self-produced material as an intermediate material. Therefore, this unnecessary and potentially confusing paragraph (b) has been removed. This change does not affect a producer's option to designate self-produced packaging materials as intermediate materials if it is in the producer's interest to do so, and this point has been clarified by the addition of a new section 7(14). Similarly, a new section 7(19) has been added to cover accessories, spare parts and tools that are self-produced. Consequential amendments have also been made by renumbering the subsections which follow these new provisions.

A new Example 8 has also been added to section 7(20) (section 7(17) in the interim texts) in order to illustrate the effects of section 7(1) and section 7(11) (section 7(10) in the interim texts) on a situation in which a producer of a good provides an indirect material, which is also an assist in this example, to a material producer for use in the production of a material that is subsequently used in the production of the good. If the indirect material is provided free of charge and the cost of the indirect material is not recorded on the books of that material producer, section 7(11) provides that the value of the indirect material is not included in the regional value content calculation under the net cost method for the material when determining whether or not the material is originating. However, if, as in this example, the indirect material is also an assist and the material that is made with benefit of the indirect material is subsequently used in the production of a good by the producer who supplied the indirect material, section 7(1) provides that the value of the indirect material (assist) is included in the value of that material (whether or not originating) when calculating the regional value content of the good.

Section 9

If a traced material has been incorporated into an originating material that is then acquired by the producer of a light duty automotive good, the value of that traced material may be determined by one of the methods set out in section 9(2)(e) or 9(2)(f) of the trilateral regulations. Paragraph (e) requires information on the actual value of a traced material. Paragraph (f) provides an alternative which will always result in a value that represents the maximum value of a traced material allowable in the originating acquired material.

In order to provide the supplier of an acquired material with an option to pass forward a value that is closer to the actual value of the traced material, but which does not require revealing the actual value as required in paragraph (e), it was determined that a third option should be allowed. Accordingly, a new paragraph (f) has been added to provide that the value of the traced material may be an amount that is based on the actual regional value content (RVC) of the acquired material (rather than the regional value content requirement, or RVCR), the amount being represented by the formula $VM \times (1 - RVC)$. As a consequence of the addition of this new paragraph (f), interim paragraphs (f) through (h) have been redesignated as (g) through (i), the internal cross-references in these paragraphs have been revised to reflect these changes, and, in section 9(10), Example 9 has been amended and Examples 12 and 13 have been added in order to reflect the new option for determining the value of a traced material which has been incorporated into an originating material acquired by a producer of a light duty automotive good.

Section 10

A new section 10(1)(d)(ii) has been added to provide, as in the case of new section 9(2)(f), for a third alternative method to determine the value of a listed non-originating material incorporated into an originating material that is acquired for use in the production of a heavy duty automotive good. Necessary consequential changes have also been made involving renumbering interim subparagraphs (ii) and (iii) as (iii) and (iv), changing the affected internal cross-references in the texts, and making changes in Examples 1, 2 and 4 under section 10(10) to reflect the new method.

A new text of Example 10 replaces the interim text in section 10(10) in order to illustrate the application of section 10(8) which allows the use of averaging under the principles of section 12(3) in order to determine the value of a non-originating material for purposes of the statement required in section 10(1)(b)(ii), section 10(1)(d)(i) or section 10(1)(e)(i). The value of a non-originating material, in such a case, would not be the value of the acquired material which is a listed non-originating material; it would be the value of the non-originating material incorporated into the listed non-originating material by the producer of that listed material.

Section 11

A new subsection (11) has been added to section 11 setting forth an Example to illustrate the options available under section 11(9)(b) in the event that a producer of a motor vehicle chooses to

average only those motor vehicles to be exported to the territory of only one NAFTA country or to the territories of more than one NAFTA country.

Section 12

Section 12(1) has been amended in order to remove an ambiguous reference to the averaging of the regional value content for automotive component assemblies, automotive components, sub-components or listed materials and thereby avoid any misunderstanding with respect to the goods that may be averaged together if produced in the same plant. Specifically, the words ''any or all automotive component assemblies, automotive components, sub-components or listed materials'' have been replaced by the words ''an automotive component assembly, an automotive component, a subcomponent or a listed material''. The text as amended more closely follows the language of NAFTA Article 403(4) (which refers to ''a component'' or ''a listed material'' of Annex 403.2) and thus makes it clear, for example, that engines and transmissions may not be grouped together for purposes of averaging regional value content.

Section 16

Section 16(1) has been revised in order to provide a clearer interpretation with respect to the nature of operations that, when performed on an originating good during transshipment through a non-NAFTA country, do not cause the good to lose its status as an originating good. The revised text in subsection (1)(a) further makes it clear that, except for goods covered by section 16(3), a good is considered *not* to be an originating good if it is removed from customs control when outside the territories of the NAFTA countries.

Schedule VII

The definition of ''discontinued operations'' in section 1 has been revised in both scope and meaning in order to link the term, when used with respect to a producer's operations that are located in a NAFTA country, to the meaning set out in that NAFTA country's Generally Accepted Accounting Principles. This maintains the consistent treatment given in the NAFTA to issues related to allocation of costs.

For similar reasons, the reference in section 6(c) to ''cumulative effect of accounting changes'' has been amended to reflect that such changes are those reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles.

Schedule VIII

The texts of sections 10(1)(c) and 10(3) have been revised in order to resolve an ambiguity with respect to which word is modified by the phrase ''in the country in which the material is produced''. These changes reflect the understanding that the determination of the amount added for profit and general expenses depends on whether the material is imported by the producer or acquired from another person in the territory in which the producer is located. In both cases the amount added should be based on sales of materials of the same class or kind as that being valued. However, in regard to the former, the determination should be based on sales of such materials by producers located in the country in which the imported material was produced, whereas in the latter, the determination should be based on sales by producers located in the same country as the producer of the material being valued.

Schedule X

During the trilateral discussions, it was noted that the first table in Addendum A as set forth in the interim Appendix was incomplete in that the trilaterally-agreed table included a third column ''Total Value'' under the heading ''Materials inventory sales (Receipts of material A)''. Accordingly, the first table in Addendum A has been corrected to reflect the trilateral text.

Technical Amendments

Many additional amendments reflected in the texts set forth in this document concern simply technical changes relating to matters such as punctuation, cross references, typographical format and consequential renumbering of provisions. These changes are not intended to have any effect on the substance or content of the texts.

Section 181.131

In light of certain of the trilaterally-agreed changes to the Appendix texts as discussed above, the Parties also agreed that it would be necessary to have a rule covering the transition from the interim Appendix texts to the new Appendix texts in the case of producers for whom an averaging period started prior to, and would extend beyond, the agreed October 1, 1995, effective date of the new Appendix texts. Accordingly, § 181.131 as set forth below has been modified by designating the interim text as paragraph (a) and by adding new paragraphs (b) and (c) to reflect the agreed-upon transitional rules.

Other Changes

Based on further internal review of the interim regulatory texts, Customs has determined that the following additional changes thereto should be made.

Section 10.8(a)

The interim regulatory amendments in T.D. 94–1 included the addition of a new paragraph (a) to § 10.8 of the Customs Regulations (19 CFR 10.8) to clarify that the provisions of that section do not apply in the case of goods returned to the United States after exportation for repairs or alterations in Canada or Mexico, for which separate provisions were set forth in interim § 181.64. Subsequently, on May 17, 1994, Customs published in the **Federal Register** (59 FR 25563) as T.D. 94–47 a final rule document which included a complete revision of § 10.8. However, the text of this revised § 10.8 did not carry forward the substance of the interim NAFTA amendment. Accordingly, this document amends the introductory text of § 10.8(a) as published in T.D. 94–47 to incorporate the substance of that NAFTA provision.

Section 12.132

The interim regulatory amendments in T.D. 94–1 included the addition of a new § 12.132 to clarify the use of country of origin declarations, which were provided for in § 12.130(f) of the Customs Regulations (19 CFR 12.130(f)), in the case of textile and apparel goods which are subject to the provisions of Annex 300–B of the NAFTA. Subsequently, on June 20, 1994, Customs published in the **Federal Register** (59 FR 31519) as T.D. 94–52 an interim rule document which amended interim § 12.132 by adding thereto a new paragraph (b) requiring submission of a Certificate of Eligibility in connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300–B of the NAFTA. In order to ensure that this document accurately reflects current regulatory requirements, the text of § 12.132 is republished below to incorporate the interim amendment effected by T.D. 94–52. Customs intends to publish a separate final rule document in the near future which will specifically address T.D. 94–52, including any public comments submitted in response thereto.

Section 181.22(a)

Interim § 181.22(a) provided that the importer must maintain documentation relating to an imported good for five

years after the date of ''importation'' of the good. In order to reflect the requirements of U.S. law (19 U.S.C. 1508(c), as amended by section 614 of the Act), § 181.22(a) as set forth below has been modified to refer to five years after the date of ''entry'' of the good.

Section 181.22(b)(2)

In addition to the removal of the references to a ''producer'' as discussed above, § 181.22(b)(2), as set forth below, has been modified to refer to signature of the Certificate of Origin by the exporter's authorized agent ''having knowledge of the relevant facts''. Customs believes that this change is appropriate to ensure that the signature has substantive relevance that goes beyond that of a mere agency relationship.

Section 181.22(d)

The following changes have been made to § 181.22(d) which specifies circumstances in which a Certificate of Origin is not required:

1. For editorial and citation purposes, the text as set forth below has been rearranged and divided into paragraph (d)(1) (which sets forth the general rules for when a Certificate is not required) and paragraph (d)(2) (which covers the exception regarding a series of importations).

2. The introductory text of newly designated paragraph (d)(1) has been modified as set forth below by replacing the words ''a Certificate of Origin shall not be required for'' with the words ''an importer shall not be required to have a Certificate of Origin in his possession''. Customs believes that this change is necessary to clarify the intent which relates to the basic requirement for possession of a Certificate when a claim for preferential tariff treatment is made (see the last sentence of § 181.21(a)) rather than to the requirement for submission of the Certificate to Customs when requested under § 181.21(b).

3. In order to provide for proper notification and related procedural safeguards in a case where a Certificate is required because the importation is determined to be part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement, the text of newly designated paragraph (d)(2), as set forth below, has been modified (1) to require written notice to the importer that possession of a Certificate covering the importation at issue is required, (2) to allow the importer 30 calendar days to obtain a valid Certificate, and (3) to specify the consequence of a failure to timely obtain the Certificate (denial of the claim for preferential tariff treatment).

Section 181.41

In § 181.41, which prescribes the applicability of the Subpart E ''NAFTA drawback'' (as defined in § 181.1(o)) provisions, the first sentence has been changed as set forth below by the addition of a reference to ''any good that is a 'good subject to NAFTA drawback' within the meaning of 19 U.S.C. 3333'' in order to (1) incorporate by reference the terms of NAFTA Article 303(6) as implemented in U.S. law and (2) clarify that those NAFTA Article 303 and U.S. statutory standards are applicable under Subpart E both for drawback purposes and for purposes of the § 181.53 duty-deferral provisions. In addition, for similar clarification purposes, the first sentence of § 181.53(a)(2) as set forth below has been changed to refer to a '''good subject to NAFTA drawback' within the meaning of 19 U.S.C. 3333''.

Section 181.44

In § 181.44, which specifies the circumstances in which drawback is calculated under the NAFTA ''lesser of the two'' rule, a new paragraph (g) has been added as set forth below to cover goods that are ''unused'' within the meaning of 19 U.S.C. 1313(j)(1) but have changed in condition after importation into the United States so as not to be eligible for full drawback under § 181.45(b).

Section 181.47

In order to facilitate Customs processing of NAFTA drawback claims, the following changes have been made to the text of interim § 181.47 which concerns the completion of claims for drawback under Subpart E: (1) In paragraph (a), language has been added at the end of the second sentence to provide that claims under Subpart E must be filed separately from non-NAFTA claims filed under Part 191; and (2) a sentence has been added at the end of paragraph (b)(1) to provide for inclusion of the word ''NAFTA'' at the top of each drawback entry form filed under Subpart E.

Section 181.50

In § 181.50, which concerns payment and liquidation of drawback claims, paragraph (b) as set forth below has been modified (1) to refer to when a drawback claim is to be liquidated (rather than when it becomes ''final'') and (2) by the addition of a sentence at the end to refer to adjustments of drawback claims under 19 U.S.C. 1508(b)(2)(B)(iii).

Section 181.62

With regard to interim § 181.62 which concerns duty-free treatment of commercial samples of negligible value imported from Canada or Mexico, Customs notes that paragraphs (b)(3) and (c) thereof, which specifically addressed textile samples, did not devolve from a specific statutory provision whereas the remainder of the section did reflect the terms of an underlying U.S. statutory provision (subheading 9811.00.60, HTSUS). Since implementation of the commercial sample provision in Article 306 of the NAFTA is a function of what is permissible or required under applicable U.S. law (in this case, subheading 9811.00.60, HTSUS), § 181.62 as set forth below has been modified by the removal of paragraphs (b)(3) and (c).

Section 181.63

Interim § 181.63, which concerned duty-free treatment of printed advertising materials imported from Canada or Mexico, reflected both the terms of Article 306 of the NAFTA and the definition of ''printed advertising materials'' in Article 318 of the NAFTA; thus, the regulatory text referred generically to ''goods classified in Chapter 49, HTSUS'', which chapter covers some goods for which duty-free treatment is not provided. Since U.S. duty treatment of goods covered by NAFTA Article 306 is controlled by the terms of the HTSUS, Customs has determined that § 181.63 serves no effective purpose and therefore should be removed and reserved until such time as appropriate changes are made to the HTSUS to reflect the terms of NAFTA Article 306.

Section 181.64(c)(1)(ii)

With regard to interim § 181.64 which concerns goods returned after repair or alteration in Canada or Mexico, Customs notes that paragraph (c)(1)(ii) thereof provides for a declaration by the owner, importer, consignee, or agent stating that, among other things, ''the goods were not previously imported in bond or admitted into a foreign trade zone or imported in similar status''. This statement was included in the declaration to address the exception for ''goods subject to NAFTA drawback'' in U.S. Note 1 to Subchapter II of Chapter 98, HTSUS. That note, which applies to the whole subchapter and thus pertains, *inter alia,* to all articles returned after repair or alteration abroad (including those goods repaired or altered in Canada or Mexico and covered by § 181.64), sets forth four circumstances

in which articles may not be classified and thus receive the duty treatment prescribed in the subchapter (under subheading 9802.00.40 or 9802.00.50 in the case of repaired or altered goods). The note, which prior to the NAFTA did not contain the ''NAFTA drawback'' exception language, was intended to ensure that goods imported into the United States in certain circumstances in which duty is not paid or is later refunded (for example, duty-free under a temporary importation bond or with subsequent drawback of duties upon exportation), and which are subsequently exported (for example, for repair or alteration) and then returned, do not re-enter the commerce of the United States and again escape full duty assessment by virtue of their classification in a reduced-duty provision under Subchapter II. The exception in the note for ''goods subject to NAFTA drawback'' was added in connection with the adoption of the NAFTA in consideration of the fact that the NAFTA drawback and duty-deferral provisions (see Subpart E of Part 181 below) render the note unnecessary in a NAFTA context because assessment of duty is required prior to exportation to Canada or Mexico under the NAFTA drawback provisions (see the definition of ''NAFTA drawback'' in § 181.1(o) below).

On further review, Customs believes that the language in the declaration quoted above does not adequately address the basic issue under U.S. Note 1 to Subchapter II of Chapter 98, HTSUS, that is, whether the imported goods were subject to NAFTA drawback. In other words, if the goods were subject to NAFTA drawback, then none of the restrictions in the note would apply and the note would not be a bar to classification of the repaired or altered goods in the subchapter. On the other hand, if the goods were not subject to NAFTA drawback and one of the restrictions in the note applied to the goods, then the note would operate as a bar to classification of the repaired or altered goods in the subchapter. Accordingly, the declaration in § 181.64(c)(1)(ii), as set forth below, has been modified in this regard to more accurately reflect the minimum information that Customs must have to ensure compliance with the applicable statutory standard.

Section 181.72(a)(2)(i)

In order to provide necessary flexibility to Customs and at the same time reflect the method most often employed by Customs, § 181.72(a)(2)(i), which concerns origin verification letters, has been modified as set forth below to provide that the verification letter ''may be on Customs Form 28 or other appropriate format''.

Section 181.72(d)(2)(ii)

In § 181.72(d)(2)(ii) which concerns the consequences of a failure on the part of the exporter or producer of a good to respond to a follow-up verification letter or questionnaire, the introductory text has been modified as set forth below to provide that Customs may ''consider the good to be non-originating and consequently may'' deny preferential tariff treatment on the good. Customs believes that the reference to non-originating status in this context is necessary if the follow-up letter or questionnaire is to include the ''written determination'' (that is, a determination as to whether the good is an originating good) referred to in paragraphs (d)(1)(i) and (d)(2)(ii)(A).

Section 181.73(a)

Section 181.73(a), which requires written notification prior to conducting a verification visit in Canada or Mexico, has been modified as set forth below by removing from the first sentence the words '', including a follow-up to an earlier visit,''. On further review, Customs has determined that this requirement is neither reflected in the text of the Agreement nor otherwise necessary since the procedural safeguards afforded by the notification requirement are covered by the notification given prior to the initial visit. Moreover, requiring written notification (and, thus, written consent under § 181.74) prior to each follow-up visit would impose an unreasonable administrative burden on Customs and could compromise the overall effectiveness of the verification visit process.

Section 181.75(a)(2)

Section 181.75(a)(2) requires that a written origin determination include a statement setting forth the findings of fact made in connection with the origin verification and upon which the origin determination is based. An exception has been added to this section as set forth below to cover the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire. Customs believes that this change is necessary because, under modified § 181.72(d)(2)(ii) as discussed above, the negative origin determination may result merely from a failure on the part of the exporter or producer of the good to respond to the follow-up letter or questionnaire.

Section 181.75(b)(2)(iv)

Section 181.75(b)(2)(iv) as set forth below has been modified by the addition of language at the end to cover cases where an exporter or producer would protest the negative origin determination itself rather than the liquidation of an entry (for example, where the importer's NAFTA claim was made in a protest rather than as part of the entry process).

Section 181.76(a)

Section 181.76(a) has been modified as set forth below to provide that an origin determination ''may be applied'' (rather than ''shall be effective'') upon issuance of the determination, and the provisions regarding the negative origin determination exception to this general rule have been set forth as a new paragraph (b). Customs believes that these editorial changes are necessary to align on terminology used elsewhere in § 181.76 and to reflect the fact that a Customs decision regarding a rate of duty takes effect only when actually applied to a transaction (that is, in connection with the liquidation of an entry).

Section 181.76(c)

In § 181.76(c) (§ 181.76(b) in the interim texts), which concerns the application of origin determinations where there is a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good qualifies as an originating good, the first sentence as set forth below has been modified (1) to state that Customs may ''deny subsequent claims for'' (rather than ''withhold'') preferential tariff treatment and (2) by adding at the end the words '', provided that advance written notice of the intent to deny such claims is given to the importer.'' The first change is intended both to conform the text to the legal responsibility of Customs in connection with the entry and liquidation process and to reflect the intent of the underlying NAFTA provision which is prospective in nature. The second change is simply intended to ensure that the importer will receive appropriate notice of the intended action by Customs. In addition, as a consequence of the replacement of the word ''withhold'' in § 181.76(c), § 181.71 as set forth below has been modified by removing the words ''or withhold'' before the words ''preferential tariff treatment''.

Section 181.76(e)

In § 181.76(e) (§ 181.76(d) in the interim texts), which limits the application of negative origin

determinations to prior importations in certain specified circumstances, the first sentence as set forth below has been modified by adding at the end the words ''and on which that person did in fact rely.'' Customs believes that this change is necessary because the underlying NAFTA provision is founded on the principle of equitable relief based on detrimental reliance, and there can be no occasion for equitable relief if no reliance, and thus no detriment, has occurred.

Section 181.76(f)

Section 181.76(f) (§ 181.76(e) in the interim texts) has been modified as set forth below (1) by replacing ''denies'' with ''proposes to deny'', (2) by replacing ''effective date of the denial'' with ''application of the determination'', and (3) and by adding after ''90 calendar days'' the words ''from the date of issuance of the determination''. Customs believes that these changes are appropriate for purposes of precision as regards the procedures discussed in the section.

Section 181.81

Interim § 181.81 concerned the applicability of penalties to NAFTA transactions and consisted of a general statement (paragraph (a)) and a specific provision regarding false certifications by U.S. exporters or producers (paragraph (b)). On further review of this section, Customs believes that interim paragraph (b) is redundant and thus unnecessary because its purpose is already achieved by the general interim paragraph (a) statement. Accordingly, § 181.81 as set forth below has been modified to reflect only the text contained in interim paragraph (a).

Section 181.100(b)(3)

Section 181.100(b)(3) concerns the effective date for a modification or revocation of an advance ruling and provides for a delayed effective date of up to 90 days in some circumstances. In a case where the delay is requested by the party to whom the ruling letter was issued, the text, as set forth below, has been modified to refer to reliance ''in good faith'' rather than to reliance that is ''reasonable''. This change aligns the text on the standard set forth in Article 509(8) of the NAFTA.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the additional considerations discussed above, Customs believes that the interim regulations published in T.D. 94–1 should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. Although this document sets forth the majority of the interim regulatory amendments adopted herein as a final rule and thus both republishes portions of the interim texts without change and amends other portions of the interim texts to incorporate the changes discussed above, it does not republish those unchanged interim amendments, involving the following provisions, which were set forth in T.D. 94–1 within an amendatory instruction rather than in full regulatory text format: §§ 10.36a, 10.66, 10.67, 134.1, 134.22, 134.23, 134.24, 134.32, 134.35, 134.43, 134.44, 174.12, 174.29, 177.0, and 177.1. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Inapplicability of Public Notice and Comment Procedures and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice and comment procedures are inapplicable to these final regulations because they are within the foreign affairs function of the United States. In addition, for the above reason and because the Parties have agreed to promulgate final NAFTA implementing regulations with effect from October 1, 1995, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a 30-day delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations implement obligations of international agreements and statutory requirements relating thereto, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515–0205. The estimated average annual burden associated with this collection is 6.31 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

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

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Canada, Customs duties and inspection, Marking, Mexico, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

19 CFR Part 24

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

19 CFR Part 123

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 134

Canada, Country of origin, Customs duties and inspection, Labeling, Marking, Mexico, Packaging and containers, Trade agreements.

19 CFR Part 162

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

19 CFR Part 174

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

19 CFR Part 177

Administrative practice and procedure, Courts, Judicial proceedings, Rulings, Trade agreements.

19 CFR Part 178

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

19 CFR Part 181

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

19 CFR Part 191

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

Amendments to the Regulations

Accordingly, the interim rule amending Parts 10, 12, 24, 123, 134, 162, 174, 177, 178 and 191 (19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178 and 191) and adding Part 181, Customs Regulations (19 CFR Part 181), which was published at 58 FR 69460–69565 on December 30, 1993, and which was corrected at 59 FR 8852 on February 24, 1994, and at 59 FR 15047 on March 31, 1994, and the interim rule amending Part 12, Customs Regulations (19 CFR Part 12), which was published at 59 FR 31519–31521 on June 20, 1994, are adopted as a final rule with certain changes set forth below. The final texts, except for those amendments published in T.D. 94–1 which were set forth within an amendatory instruction rather than in full regulatory text format, are either republished below without change or are set forth below with the amendments discussed above under **SUPPLEMENTARY INFORMATION.**

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

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

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

2. Section 10.8 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section and except in the case of goods covered by § 181.64 of this chapter, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

* * * * *

3. The last sentence of § 10.31(f) is republished 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 or Mexico and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security shall be required if the entered article is a good originating in Canada or Mexico within the meaning of General Note 12, HTSUS.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. Section 12.132 is republished to read as follows:

§ 12.132 Textile and apparel goods under the North American Free Trade Agreement.

(a) *Country of origin declaration*. The provisions of § 12.130(f) of this part regarding submission of a country of origin declaration shall apply to all textile and apparel goods which are subject to the provisions of Annex 300–B of the North American Free Trade Agreement (NAFTA). Although a separate country of origin declaration shall not be required for such goods for NAFTA purposes, the following additional requirements shall apply for purposes of this section:

(1) All commercial importations of textile and apparel goods shall be accompanied by the appropriate declaration;

(2) A declaration by each U.S., Canadian, and/or Mexican manufacturer or producer of the goods, or by the exporter of the goods if a declaration cannot be obtained from the manufacturer or producer, and, if there are multiple manufacturers or producers, a separate declaration by each manufacturer, producer or exporter, shall be furnished by the importer. Packaging operations shall not be considered manufacture or production for purposes of this paragraph; and

(3) If the district director is unable to determine the country of origin of the goods because the information contained in a declaration is incomplete, the shipment to which that declaration pertains shall not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which it would otherwise be eligible.

(b) *Certificate of Eligibility*. In connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300–B of the NAFTA and Additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States, the importer shall submit to Customs a Certificate of Eligibility covering the goods. The Certificate of Eligibility shall be properly completed and signed by an authorized official of the Canadian or Mexican government and shall be presented to Customs at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter. Failure to timely submit the required Certificate of Eligibility will result in a denial of the claim.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701.

* * * * *

2. In § 24.22, paragraph (g)(1), the introductory text of paragraph (g)(2)(i)(A), and paragraph (g)(2)(iv) are republished to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section:

(i) For the period from January 1, 1994 through September 30, 1997, a fee of $6.50 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States; and

(ii) Commencing on October 1, 1997, a fee of $5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) * * *

(i)(A) Except during the period from January 1, 1994 through September 30, 1997, persons whose journey:

* * * * *

(iv) Except during the period from January 1, 1994 through September 30, 1997, persons departing from and returning to the United States without having touched a foreign port or place;

* * * * *

3. Section 24.23(c)(3) is republished to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply either to goods originating in Canada within the meaning of General Note 9, HTSUS, or to goods originating in Canada within the meaning of General Note 12, HTSUS, where such goods qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. Where originating goods as described in the preceding sentence are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

2. The last sentence of § 123.0 is republished to read as follows:

§ 123.0 Scope.

* * * Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. The last sentence of § 134.0 is republished to read as follows:

§ 134.0 Scope.

* * * Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

3. In § 134.1, the last sentence of paragraph (d)(2) and paragraphs (g), (h), (i) and (j) are republished, and a new paragraph (k) is added, to read as follows:

§ 134.1 Definitions.

* * * * *

(d) * * *

(2) * * * With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

* * * * *

(g) *Good of a NAFTA country.* A ''good of a NAFTA country'' is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA.* ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on December 17, 1992.

(i) *NAFTA country.* ''NAFTA country'' means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules.* The ''NAFTA Marking Rules'' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

(k) *Conspicuous.* ''Conspicuous'' means capable of being easily seen with normal handling of the article or container.

4. Section 134.22(d) is republished to read as follows:

§ 134.22 General rules for marking of containers or holders.

* * * * *

(d) *Usual containers*—(1) *''Usual container'' defined.* For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

(2) *A good of a NAFTA country which is a usual container.* A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

* * * * *

5. In § 134.32, paragraphs (p) and (q) are republished to read as follows:

§ 134.32 General exceptions to marking requirements.

* * * * *

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

* * * * *

6. Section 134.35(b) is republished to read as follows:

§ 134.35 Articles substantially changed by manufacture.

* * * * *

(b) *Goods of a NAFTA country.* A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

7. Section 134.45(a) is republished to read as follows:

§ 134.45 Approved markings of country name.

(a) *Language.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin shall be published in the **Federal Register** and the Customs Bulletin.

(2) A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish.

* * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

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

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

* * * * *

2. The last sentence of § 162.0 is republished to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 174—PROTESTS

1. The authority citation for Part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. The last sentence of § 174.0 is republished to read as follows:

§ 174.0 Scope.

* * * Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking decisions under the North American Free Trade Agreement are contained in part 181 of this chapter.

3. Section 174.12(a)(5) is republished to read as follows:

§ 174.12 Filing of protests.

(a) * * *

(5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in § 181.11(a) of this chapter; or

* * * * *

4. Section 174.12(e)(2) is revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(e) * * *

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws, the date of a refusal to reliquidate under section 520(c)(1) of the Tariff Act of 1930, as amended, or the date of written notice of a denial of a claim filed under section 520(d) of the Tariff Act of 1930, as amended); or

* * * * * 15. Section 174.15 is republished to read as follows:

§ 174.15 Consolidation of protests filed by different parties.

(a) *General.* Subject to paragraph (b) of this section, separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

(b) *NAFTA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under subpart G of part 181 of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the district director in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

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

2. Section 178.2 is amended by 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.
	* * * * *	
§ 12.132	Country of origin declaration covering textile and apparel goods under the North American Free Trade Agreement.	1515–0205
	* * * * *	
§ 181.11	Certificate of Origin for purposes of the North American Free Trade Agreement	1515–0205
§§ 181.22 and 181.32	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
§§ 181.47 and 181.53	Claim for refund, waiver or reduction of duty under the drawback and duty deferral provisions of the North American Free Trade Agreement.	1515–0205
§ 181.64	Claim for duty-free or reduced-duty treatment on repaired or altered goods under the North American Free Trade Agreement.	1515–0205
§ 181.72	Submission of information in connection with origin verifications under the North American Free Trade Agreement.	1515–0205
§ 181.82	Statement accompanying corrected declaration or notification of incorrect certification under the North American Free Trade Agreement.	1515–0205
§§ 181.93–181.96 and 181.102	Submission of information in connection with requests for issuance or review of advance rulings under the North American Free Trade Agreement.	1515–0205
§§ 181.113, 181.115 and 181.116	Submission of information in connection with the review and appeal of adverse marking decisions under the North American Free Trade Agreement.	1515–0205
§ 181.131	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
	* * * * *	

1. Part 181 is revised to read as follows:

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.0 Scope.

This part implements the duty preference and related Customs

provisions applicable to imported goods under the North American Free Trade Agreement (the NAFTA) entered into on December 17, 1992, and under the North American Free Trade Agreement Implementation Act (107 Stat. 2057) (the Act). Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the Customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the NAFTA and the Act are contained in parts 10, 12, 24, 134 and 174 of this chapter.

Subpart A—General Provisions

§ 181.1 Definitions.

As used in this part, the following terms shall 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 subpart, section or other portion of this part:

(a) *Canada. Canada,* when used in a geographical rather than governmental context, means the territory of Canada as defined in Annex 201.1 of the NAFTA.

(b) *Commercial importation. Commercial importation* means the importation of a good into the United States, Canada or Mexico for the purpose of sale, or any commercial, industrial or other like use.

(c) *Customs administration. Customs administration* means the competent authority that is responsible under the law of the United States, Canada or Mexico for the administration of its customs laws and regulations.

(d) *Customs duty. Customs duty* means 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, other than any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the General Agreement on Tariffs and Trade, or any equivalent provision of a successor agreement to which the United States, Canada and Mexico are party, in respect of like, directly competitive or substitutable goods of the United States, Canada or Mexico, 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 that is applied pursuant to the domestic law of the United States, Canada or Mexico and that is not applied inconsistently with Chapter Nineteen of the NAFTA;

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

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

(5) Fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to the provisions of Chapter Seven of the NAFTA.

(e) *Determination of origin. Determination of origin* means a determination as to whether a good qualifies as a good originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(f) *Exporter. Exporter* means an exporter located, and required under this part to maintain records regarding exportations of a good, in the United States, Canada or Mexico.

(g) *Generally Accepted Accounting Principles. Generally Accepted Accounting Principles* means the recognized consensus or substantial authoritative support in the United States, Canada or Mexico with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally Accepted Accounting Principles under this definition may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

(h) *HTSUS. HTSUS* means the Harmonized Tariff Schedule of the United States.

(i) *Importer. Importer* means an importer located, and required under this part to maintain records regarding importations of a good, in the United States, Canada or Mexico.

(j) *Intermediate material. Intermediate material* means an ''intermediate material'' as defined in the appendix to this part.

(k) *Marking Rules. Marking Rules* means the ''NAFTA Marking Rules'' as defined in § 134.1(j) of this chapter.

(l) *Measure. Measure* means any law, regulation, procedure, requirement or practice.

(m) *Mexico. Mexico,* when used in a geographical rather than governmental context, means the territory of Mexico as defined in Annex 201.1 of the NAFTA.

(n) *NAFTA. NAFTA* means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (107 Stat. 2057).

(o) *NAFTA drawback. NAFTA drawback* means any drawback, waiver or reduction of U.S. customs duty provided for in subpart E of this part.

(p) *Net cost of a good. Net cost of a good* means the ''net cost of a good'' as defined in the appendix to this part.

(q) *Originating. Originating,* when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

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

(s) *Preferential tariff treatment. Preferential tariff treatment* means the duty rate applicable to an originating good or to a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies.

(t) *Producer. Producer* means a *producer* as defined in the appendix to this part.

(u) *Production. Production* means *production* as defined in the appendix to this part.

(v) *Transaction value. Transaction value* means transaction value as defined in the appendix to this part.

(w) *United States. United States,* when used in a geographical rather than governmental context, means the territory of the United States as defined in Annex 201.1 of the NAFTA.

(x) *Used. Used* means *used* as defined in the appendix to this part.

(y) *Value. Value* means the value of a good or material for purposes of calculating customs duties or for purposes of applying the provisions of the appendix to this part.

Subpart B—Export Requirements

§ 181.11 Certificate of Origin.

(a) *General.* A Certificate of Origin shall be employed to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

(b) *Preparation of Certificate in the United States.* An exporter in the United States who completes and signs a Certificate of Origin for the purpose set forth in paragraph (a) of this section shall use Customs Form 434 or such other medium or format as approved by the Canadian or Mexican customs administration for that purpose. Where the U.S. exporter is not the producer of the good, that exporter may complete and sign a Certificate on the basis of:

(1) Its knowledge of whether the good qualifies as an originating good;

(2) Its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(3) A completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

(c) *Submission of Certificate to Customs.* An exporter in the United States, and a producer in the United States who has voluntarily provided a copy of a Certificate of Origin to that exporter pursuant to paragraph (b)(3) of this section, shall provide a copy of the Certificate to Customs upon request.

(d) *Notification of errors in Certificate.* An exporter or producer in the United States who has completed and signed a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall within 30 calendar days after the date of discovery of the error notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

§ 181.12 Maintenance and availability of records.

(a) *Maintenance of records*—(1) *General.* An exporter or producer in the United States who completes and signs a Certificate of Origin shall maintain in the United States, for five years after the date on which the Certificate was signed, all records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada or Mexico, including records associated with:

(i) The purchase of, cost of, value of, and payment for, the good that is exported from the United States;

(ii) The purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and

(iii) The production of the good in the form in which the good is exported from the United States.

(2) *Method of maintenance.* The records referred to in paragraph (a) of this section shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained in hard-copy form, on microfilm or microfiche or in automated record storage devices (for example, magnetic discs and tapes) if associated computer programs are available to facilitate retrieval of the data in a usable form.

(b) *Availability of records*—(1) *To Customs.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section shall be made available for examination and inspection by the port director or other appropriate Customs officer in the same manner as provided in § 162.1d of this chapter in the case of U.S. importer records.

(2) *To the Canadian or Mexican customs administration.* If a U.S. exporter or producer receives notification of, and consents to, an origin verification visit by the Canadian or Mexican customs administration under Article 506 of the NAFTA (see § 181.74(e) of this part), such consent shall constitute agreement by the U.S. exporter or producer to make available to an officer of that customs administration all records required to be maintained under this section and to provide facilities for the inspection thereof. If, during the course of an origin verification of a U.S. producer, the Canadian or Mexican customs administration finds that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

§ 181.13 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.

Subpart C—Import Requirements

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

(a) *Declaration.* In connection with a claim for preferential tariff treatment for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol ''CA'' for a good of Canada, or the symbol ''MX'' for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in § 181.22 of this part and except in the case of a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies (see, however, § 12.132 of this chapter), the declaration shall be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under § 181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

§ 181.22 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of entry of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 162.1a(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to Customs under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on Customs Form 434, including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to Customs Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the

same information and certification set forth on Customs Form 434;

(2) Shall be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the port director, upon request, a written English translation thereof;

(4) Shall be accepted by Customs for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) 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

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the port director as valid for the purpose set forth in § 181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the port director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of § 181.76(c) of this part, the port director determines that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the port director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer shall not be required to have a Certificate of Origin in his possession for:

(i) An importation of a good for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

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

(iii) A commercial importation of a good whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement set forth in this part, the port director shall notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer shall have 30 calendar days from the date of the written notice to obtain a valid Certificate, and a failure to timely obtain the Certificate will result in denial of the claim for preferential tariff treatment. For purposes of paragraph (d)(2) of this section, a ''series of importations'' means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

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

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), 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 part 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 the United States, Canada or Mexico and the importer of the good does not provide, at the request of the port director, copies of the customs control documents that indicate to the satisfaction of the port director that the good remained under customs control while in such other country.

Subpart D—Post-Importation Duty Refund Claims

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

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, 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 on that originating good was made at that time under § 181.21(a) of this part, 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 § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

§ 181.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall 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 shall 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 covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(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 shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) 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 shall identify the protest, petition or request by number and date.

§ 181.33 Customs processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the port director shall 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 shall 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 shall 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 shall 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 shall reliquidate the entry taking into account the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico.* If any information is provided to Customs pursuant to § 181.32(b) (4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the port director to the customs administration of the country from which the good was exported.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under § 181.32(b)(3) of this part cannot be accepted as valid (see § 181.22(c) of this part), or if, following initiation of an origin verification under § 181.72(a) 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 § 181.72(d), § 181.74(c) or § 181.76(c) 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 shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

(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 shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

§ 181.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333. Except in the case of § 181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

§ 181.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and

(d) Customs duties paid or owed under unused merchandise substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

§ 181.43 Eligible goods subject to drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in § 181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

§ 181.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in § 181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value shall be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section shall be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

Example. Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

Example 1. Upon the importation of Product X to the United States from Japan, Company A paid $2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed the equivalent of US$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the $2.00, or $1.98. The $2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (the equivalent of US$11.00) on Product Y.

Example 2. Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid $5.00 in duties. Company A manufactured Product X into Product Y, sold it to Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term ''same kind and quality'' used in § 1313(b) (see § 191.2(m) of this chapter) shall have the same meaning as the term ''identical or similar good'' used in Article 303 of the NAFTA except that there shall be no requirement that the good be manufactured in the same country.

Example 1. Upon importation of Product X from Japan to the United States, Company A paid $5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of $1.98 (or 99 percent of the US$2.00 equivalent Company B paid in duty to Canada) since that $2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

Example 2. Same facts as above example, but Company B paid the equivalent of US$5.00 to Revenue Canada. Company A is entitled to obtain $4.95 in drawback (a refund of 99 percent of $5.00 paid to the United States). Since the same amount of duty was assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

Example. Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of $200. Upon exportation of the hams to Mexico, Company Z pays the equivalent of US$250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the $200.00 in duties it paid on the importation of the salt into the United States because that $200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

Example. A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which $160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7575–A, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that $160.00 was a lesser amount than the duties paid on the engine to Canada.

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of § 181.45(b)(1) may be eligible for drawback under this section, except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

Example. Upon importation of Product X from Spain to the United States, the U.S. importer pays $10.00 in duties. While in the original package in the importer's warehouse, Product X becomes damaged. A Canadian purchaser buys Product X and imports it into Canada and pays the equivalent of US$5.00 in duties assessed by Revenue Canada. The Canadian purchaser who exported Product X from the United States to Canada and who otherwise qualifies for drawback is entitled to drawback under 19 U.S.C. 1313(j)(1) in the amount of $4.95 (99 percent of the US$5.00 equivalent in duties paid to Canada). Eligibility for full drawback of the $10.00 in U.S. duties under § 181.45(b) would be precluded because Product X, although unused, was not exported to Canada in the same condition as when imported into the United States within the meaning of § 181.45(b)(1).

§ 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

Example. Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders for successive stages of production until NAFTA tariffs are fully phased out.)

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition.* A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 181.44 of this part.

Example. X imports a desk into the United States from England and pays $25.00 in duty. X immediately exports the desk to Z in Mexico and Z pays the equivalent of US$10.00 in Mexican duties. X can obtain a refund of 99 percent of the $25.00 paid upon importation of the desk into the United States.

(1) *Same condition defined.* For purposes of this subpart, a reference to a good in the ''same condition'' includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting or grading.

(2) *Commingling of fungible goods—*

(i) *General.* Commingling of fungible goods in inventory, such as parts, is permissible (see § 191.141(e) of this chapter), provided that the entries for designation for same condition drawback are identified on the basis of an approved inventory method set forth in the appendix to this part.

(ii) *Exception.* Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in § 181.44 of this part. Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.

Example. X orders, after seeing a sample in the ABC Company's catalog, a certain quantity of 2-by-4 lumber from ABC Company located in Honduras. ABC Company, having run out of the specific lumber, ships instead a different kind of lumber. X rejects the lumber because it did not conform to the sample and is asked to send it to a customer of ABC in Canada. X exports it within 90 days of its release from Customs custody. X may recover 99 percent of the $500 duties it paid to U.S. Customs upon the exportation of the lumber, or $495.00.

(d) *Certain goods exported to Canada.* Goods identified in Annex 303.6 of the NAFTA and in sections 203(a) (7) and (8) of the North American Free Trade Agreement Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part.

§ 181.46 Time and place for filing drawback claim.

(a) *Time of filing.* A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing.* A drawback claim must be filed at the port(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from that port. To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place (see § 191.141(b)(3) (ii) and (iii) of this chapter). Customs must be notified at least 2 working days in advance of the intended date of

exportation in order to have the opportunity to examine the goods.

§ 181.47 Completion of claim for drawback.

(a) *General.* A claim for drawback shall be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback shall be in accordance with the provisions of part 191 of this chapter; however, a drawback claim subject to the provisions of this subpart shall be filed separately from any part 191 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the 3-year period specified in § 181.46 of this part shall be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart shall consist of the filing of the appropriate completed drawback entry form, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry form filed under this subpart shall be conspicuously marked at the top with the word ''NAFTA''.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, must be submitted to Customs in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following shall be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed Customs Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) Customs Form 7501 or the import entry number;

(C) Exporter's summary procedure, if applicable. For purposes of this subpart, the exporter's summary procedure must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred shall be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify Customs if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1).* The following shall be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed Customs Form 7539J. In addition, the tariff classification number of the imported goods shall be recorded on the form;

(B) Customs Form 7501. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and Customs or taxpayer identification number. Explicit line item information shall be clearly noted on the Customs Form 7501 so that the subject goods are easily discernible;

(C) Customs Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) The certificate of delivery portion of Customs Form 331, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is required if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) Customs Form 7512, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) Evidence of exportation. If a claimant is not approved for the exporter's summary procedure, either a certified Customs Form 7511 or an uncertified Customs Form 7511 supported by documentary evidence of exportation to Canada or Mexico such as a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier, or any other evidence of exportation provided for in § 191.51 of this chapter. Supporting documentary evidence shall establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred shall be required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following shall be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7539C, completed and submitted at the time the goods are returned to Customs custody;

(B) Customs Form 7501 to establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see § 181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or

advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) Customs Form 7512, if applicable; and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph shall be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart L of part 191 of this chapter.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico shall consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B–3, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the ''pedimento'');

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

§ 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback.* The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback.* Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback.* The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1) unless he has in writing waived his right to claim drawback.

§ 181.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer (see § 191.5 of this chapter) shall be retained for at least three years after payment of such claims. However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.

§ 181.50 Liquidation and payment of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 181.44 of this part or in accordance with the regular drawback calculation. The liquidation procedures of subpart G of part 191 of this chapter shall control for purposes of this subpart.

(b) *Time for liquidation.* A drawback claim shall not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with Customs or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 181.45 of this part, a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the U.S. import entry has become final.

(c) *Accelerated payment.* Accelerated drawback payment procedures shall apply as set forth in § 191.72 of this chapter. However, a person who receives drawback of duties under this procedure shall repay the duties paid if a NAFTA drawback claim is adversely affected thereafter by administrative or court action.

§ 181.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The drawback claimant shall certify to Customs that he has not earlier received payment on the same import entry for the same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant shall repay any amount paid on the second claim.

(b) *Preparation of Certificate of Origin.* The drawback claimant shall, within 30 calendar days after the filing of the drawback claim under this subpart, submit to Customs a written statement as to whether he has prepared, or has knowledge that another person has prepared, a Certificate of Origin provided for under § 181.11(a) of this part and pertaining to the goods which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such Certificate of Origin, the claimant shall, within 30 calendar days thereafter, disclose that fact to Customs.

§ 181.52 Subsequent claims for preferential tariff treatment.

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate Customs officer shall reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 181.44 of this part.

§ 181.53 Waiver or reduction of duty under duty-deferral programs.

(a) *General*—(1) *Duty-deferral program defined.* For purposes of this section, a ''duty-deferral program'' means a measure which postpones duty payment upon arrival of a good in the United States, including a measure governing manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, or temporary importations under bond under Chapter 98, HTSUS, until withdrawn or removed for exportation to Canada or Mexico.

(2) *Treatment as entered or withdrawn for domestic consumption.* Where a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 is imported into the United States pursuant to a duty-deferral program and is subsequently exported to Canada or Mexico or is used as a material in the production of another good that is subsequently exported to Canada or Mexico, the exported good shall be treated, for purposes of this section, as if it had been entered or withdrawn for domestic consumption and thus subject to duty. However, the provisions of this paragraph shall not apply to goods covered by § 181.45.

(3) *Adjustment to duties paid.* Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who exports the good to Canada or Mexico in accordance with paragraphs (b) through (f) of this section, provided that evidence of exportation and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c) of this part) are submitted within 60 calendar days of the date of exportation.

(b) *Manipulation in warehouse.* Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company B imports toys in bulk and makes a warehouse entry into a Class 8 warehouse, whereupon Company B repackages the toys for retail sale. Upon withdrawal of the goods from the warehouse, $200 in U.S. duty is assessed. Company B exports this merchandise to Mexico and pays the equivalent of US$300 in duties. Thirty days after exportation from the United States, Company B submits to Customs evidence of exportation and a copy of the Mexican consumption entry (''pedimento'') as evidence of the payment of the US$300 equivalent to Mexico. Customs will waive the collection of the $200 assessment since $200 is a lesser amount than the total amount of duties paid to Mexico.

(c) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for immediate exportation to Canada, U.S. duty is assessed on the basis of the unmanufactured tea in the amount of $900. Company N, however, does not pay the duties at this time. Canada assesses the equivalent of US$800 on the exported ice tea mix. Company N submits to Customs both evidence of exportation to Canada and a Canadian K–84 Statement showing payment of the US$800 equivalent in duties to Canada. Company N will only be required to pay $100 in U.S. duties out of the original $900 bill.

(d) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after the date of exportation of the treated materials to Canada or Mexico either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported treated materials, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise and pays $90,000 in U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials and Customs cancels the bond charges. Two weeks later, Company Z secures a buyer, Company B, in Canada and exports the merchandise. Upon importation of the processed zinc into Canada, the equivalent of US$50,000 in duties are assessed against Company B. Company Z would like to claim a NAFTA refund under this section. Company Z must secure from Company B the necessary Canadian documentation to show exportation and to show that the US$50,000 equivalent in duties was paid to Revenue Canada in order for Company Z to obtain a refund of that amount from Customs.

(e) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then exported from the zone to Canada or Mexico, the duty assessed, as calculated under paragraph (e)(1) or (e)(2) of this section, shall be paid no later than 60 calendar days after the date of exportation of the good to Canada or Mexico except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section

or the total amount of customs duties paid to Canada or Mexico.

(1) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico.

Example. CMG imports $1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or $40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent ($25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and sells them to XYZ who ships them to Mexico. XYZ enters the automobiles in Mexico, pays the equivalent of US$20,000 in duty, and does not claim NAFTA preferential tariff treatment. Before the expiration of 60 calendar days from exportation, CMG submits the required documentation showing exportation and payment of duty in Mexico and pays $5,000 in duty to Customs representing the difference between the $25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US$20,000 equivalent paid to Mexico by XYZ.

(2) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

Example. O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon entry of the refined goods from the zone by O&G, Inc., U.S. duty is assessed on the imported crude petroleum in the amount of $700 rather than on the refined goods (which would have been assessed $1,200). O&G, Inc. then ships the refined goods to Canada. D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US$1,500 on the goods. D&O claims NAFTA preferential tariff treatment in Canada. O&G, Inc. potentially is entitled to a duty remission of the full $700 assessed in the United States. However, if D&O's NAFTA claim is approved and results in a refund of duty by Canada, O&G, Inc.'s actual duty remission or refund will be reduced by that amount of refund received by D&O in excess of $800.

(f) *Temporary importation under bond.* Where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, HTSUS) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at $6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US$6,200 equivalent in duties was assessed but not yet paid to Mexico, and Customs sends a bill to Company A for the $6,000 in U.S. duty which Company A pays. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of evidence of the finality of the collection of the US$6,200 equivalent by Mexico, is entitled to a refund of the full $6,000 in U.S. duty.

(g) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico. Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(h) *Failure to timely provide evidence of duties paid or owed to Canada or Mexico.* If the person who exports the goods to Canada or Mexico fails to provide satisfactory evidence of duties paid or owed to Canada or Mexico within the 60-day period specified in this section, that person will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(i) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs shall reliquidate the NAFTA drawback claim and obtain a refund of the amount waived or reduced in excess of the amount permitted to be waived or reduced under this section.

§ 181.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart shall be subject to such verification, including verification with the Canadian or Mexican customs administration of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as Customs may deem necessary.

Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

§ 181.61 Applicability.

This subpart sets forth the rules which apply for purposes of duty-free entry of commercial samples of negligible value as provided for in Article 306 of the NAFTA and for purposes of the re-entry of goods after repair or alteration in Canada or Mexico as provided for in Article 307 of the NAFTA.

§ 181.62 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, ''commercial samples of negligible value'' means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods; and

(2) If valued over US$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

§ 181.63 [Reserved]

§ 181.64 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules which apply for purposes of

obtaining duty-free or reduced-duty treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. Goods returned after having been repaired or altered in Canada other than pursuant to a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the United States-Canada Free-Trade Agreement (see § 10.301 of this chapter), provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, resterilizing, 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.

Example. Glass mugs produced in the United States are exported to Canada for etching and tempering operations, after which they are returned to the United States for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

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

Example. Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the United States are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

(c) *Documentation*—(1) *Declarations required.* Except as otherwise provided in this section, the following declarations shall be filed in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty free or subject to duty only on the value of the repairs or alterations performed abroad:

(i) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I/We, _____, declare that the goods herein specified are the goods which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19_____, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that such repairs or alterations were (were not) performed pursuant to a warranty; that the full cost or (when no charge is made) value of such repairs or alterations is correctly stated below; and that no substitution whatever has been made to replace any of the goods originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of goods and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see Subchapter II, Chapter 98, HTSUS)	Total value of goods after repairs or alterations

_____
Date
Signature

_____
Address

_____

_____
Capacity

_____

(ii) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the goods _____ were _____ were not (check one) subject to NAFTA drawback; that such goods were exported from the United States for repairs or alterations from _____ (port) on _____, 19___; and that the goods entered in their repaired or altered condition are the same goods that were exported on the above date and that are identified in the (above) (attached) declaration.

_____
Date
Signature _____
Address _____

_____
Capacity

_____

(2) *Additional documentation.* The port director may require such additional documentation as is deemed necessary to prove actual exportation of the goods from the United States for repairs or alterations, such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill.

(3) *Waiver of declarations.* If the port director concerned is satisfied, because of the nature of the goods or production of other evidence, that the goods are imported under circumstances meeting the requirements of this section, he may waive submission of the declarations provided for in paragraph (c)(1) of this section.

(4) *Deposit of estimated duties.* For goods returned after having been repaired or altered in Canada other than pursuant to a warranty, the port director shall require a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations performed in Canada other than pursuant to a warranty, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty for such goods, shall be limited to the cost or value of the repairs or alterations actually performed in Canada, which shall include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in the United States whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations in Canada, or otherwise.

Subpart G—Origin Verifications and Determinations

§ 181.71 Denial of preferential tariff treatment dependent on origin verification and determination.

Except where a Certificate of Origin either is not submitted when requested under § 181.22(b) of this part or is not acceptable and a corrected Certificate is not submitted or accepted as provided in § 181.22(c) of this part and except as otherwise provided in § 181.23 of this part and except in the case of a pattern of conduct provided for in § 181.76(c) of this part, Customs shall deny preferential tariff treatment on an imported good, or shall deny a post-importation claim for a refund filed under subpart D of this part, only after initiation of an origin verification under § 181.72(a) of this part which results in a determination that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part.

§ 181.72 Verification scope and method.

(a) *General.* Subject to paragraph (e) of this section, Customs may initiate a verification in order to determine whether a good imported into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA as stated on the Certificate of Origin pertaining to the good. Such a verification:

(1) May also involve a verification of the origin of a material that is used in the production of a good that is the subject of a verification under this section;

(2) May include verification of the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and may include a determination of whether a good is a qualifying good for purposes of Annex 703.2 of the NAFTA; and

(3) Shall be conducted only by means of one or more of the following:

(i) A verification letter which requests information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, and which identifies the good or material that is the subject of the verification. The verification letter may be on Customs Form 28 or other appropriate format and may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(ii) A written questionnaire sent to an exporter or a producer, including a producer of a material, in Canada or Mexico. The questionnaire:

(A) May be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) May be sent by any other method, regardless of whether it produces proof of receipt by the exporter or producer; and

(C) May be completed by the Canadian or Mexican exporter or producer either in the English language or in the language of the country in which that exporter or producer is located;

(iii) Visits to the premises of an exporter or a producer, including a producer of a material, in Canada or Mexico to review the types of records referred to in § 181.12 of this part and observe the facilities used in the production of the good or material; and

(iv) Any other method which results in information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, that is relevant to the origin determination. The information so obtained may form a basis for a negative determination regarding a good (see § 181.75(b) of this part) only if the information is in writing and is signed by the exporter or producer.

(b) *Applicable accounting principles.* Any verification of a regional value-content requirement undertaken pursuant to paragraph (a) of this section shall be conducted in accordance with the Generally Accepted Accounting Principles applied in the country from which the good was exported to the United States.

(c) *Inquiries to importer not precluded.* Nothing in paragraph (a) of this section shall preclude Customs from directing inquiries or requests to a U.S. importer for documents or other information regarding the imported good. If such an inquiry or request involves requesting the importer to obtain and provide written information from the exporter or producer of the good or from the producer of a material that is used in the production of the good, such information shall be requested by the importer and provided to the importer by the exporter or producer only on a voluntary basis, and a failure or refusal on the part of the importer to obtain and provide such information shall not be considered a failure of the exporter or producer to provide the information and shall not constitute a ground for denying preferential tariff treatment on the good.

(d) *Failure to respond to letter or questionnaire.*—(1) *Nonresponse to initial letter or questionnaire.* If the exporter or producer, including a producer of a material, fails to respond to a verification letter or questionnaire sent under paragraph (a)(2)(i) or (a)(2)(ii) of this section within 30 calendar days from the date on which the letter or questionnaire was sent, or such longer period as may be specified in the letter or questionnaire, Customs shall send a follow-up verification letter or questionnaire to that exporter or producer. The follow-up letter or questionnaire:

(i) Except where the verification letter or questionnaire only involved the origin of a material used in the production of a good and was sent to the producer of the material, may include the written determination referred to in § 181.75 of this part, provided that the information specified in paragraph (b) of that section is also included; and

(ii) Shall be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; or

(B) By any method, if no request under paragraph (d)(1)(ii)(A) of this section has been made by the Canadian or Mexican customs administration.

(2) *Nonresponse to follow-up letter or questionnaire*—(i) *Producer of a material.* If a producer of a material fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the material to be non-originating for purposes of determining whether the good to which that material relates is an originating good.

(ii) *Exporter or producer of a good.* If the exporter or producer of a good fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the good to be non-originating and consequently may deny preferential tariff treatment on the good as follows:

(A) If the follow-up letter or questionnaire included a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified therein:

(*1*) From the date on which the follow-up letter or questionnaire and

written determination were received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire and written determination were either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section; or

(B) Provided that the procedures set forth in §§ 181.75 and 181.76 of this part are followed, if the follow-up letter or questionnaire does not include a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified in the letter or questionnaire:

(*1*) From the date on which the follow-up letter or questionnaire was received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire was either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section.

(e) *Calculation of regional value content under net cost method*—(1) *General.* Where a Canadian or Mexican producer of a good elects to calculate the regional value content of a good under the net cost method as set forth in General Note 12, HTSUS, and in the appendix to this part, Customs may not, during the time period over which that net cost is calculated, conduct a verification under § 181.72(a) of this part with respect to the regional value content of that good.

(2) *Cost submission for motor vehicles.* Where, pursuant to General Note 12, HTSUS, and the appendix to this part, a Canadian or Mexican producer of a light duty vehicle or heavy duty vehicle, as defined in the appendix to this part, elects to average its regional value content calculation over its fiscal year, Customs may request, in writing, that the producer provide a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. Such a written request shall constitute a verification letter under paragraph (a)(2)(i) of this section, and the requested cost submission shall be submitted to Customs within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

§ 181.73 Notification of verification visit.

(a) *Written notification required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall give written notification of the intention to conduct the visit. Such notification shall be delivered:

(1) By certified or registered mail, or by any other method that produces a confirmation of receipt, to the address of the Canadian or Mexican exporter or producer whose premises are to be visited;

(2) To the customs administration of the country in which the visit is to occur; and

(3) If requested by the country in which the visit is to occur, to the embassy of that country located in the United States.

(b) *Contents of notification.* The notification referred to in paragraph (a) of this section shall include:

(1) The identity of the Customs office and officer issuing the notification;

(2) The name of the Canadian or Mexican exporter or producer of the good, or producer of the material, whose premises are to be visited;

(3) The date and place of the proposed verification visit;

(4) The object and scope of the proposed verification visit, including specific reference to the good or material that is the subject of the verification;

(5) The names and titles of the Customs officers performing the proposed verification visit;

(6) The legal authority for the proposed verification visit; and

(7) A request that the Canadian or Mexican exporter or producer of the good, or producer of the material, provide its written consent for the proposed verification visit.

§ 181.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall obtain the written consent of the Canadian or Mexican exporter or producer of the good or producer of the material whose premises are to be visited.

(b) *Written consent procedures.* The written consent provided for in paragraph (a) of this section shall be delivered by certified or registered mail, or by any other method that generates a reliable receipt, to the Customs officer who gave the notification provided for in § 181.73 of this part.

(c) *Failure to provide written consent or to cooperate or to maintain records.* Except as otherwise provided in paragraph (d) of this section, where a Canadian or Mexican exporter or producer of a good, or a Canadian or Mexican producer of a material, has not given its written consent to a proposed verification visit within 30 calendar days of receipt of notification pursuant to § 181.73 of this part, Customs may deny preferential tariff treatment to that good, or for purposes of determining whether a good is an originating good may consider as non-originating that material, that would have been the subject of the visit, provided that, as regards the good, notice of intent to deny such treatment is given to that exporter or producer of the good and to the U.S. importer thereof prior to taking such action. A failure on the part of the Canadian or Mexican exporter or producer of a good, or on the part of the Canadian or Mexican producer of a material, to maintain records or provide access to such records or otherwise cooperate during the verification visit shall mean that the verification visit never took place and may be treated by Customs in the same manner as a failure to give written consent to a verification visit. However, in the case of a Canadian or Mexican producer of a good who is found during a verification visit to have not maintained records in accordance with the Generally Accepted Accounting Principles applied in the producer's country, Customs may deny preferential tariff treatment on the good based solely on a failure to so maintain those records only if the producer does not conform the records to those Principles within 60 calendar days after Customs informs the producer in writing of that failure.

(d) *Postponement of visit in Canada or Mexico.* Following receipt of the notification provided for in § 181.73 of this part, the Canadian or Mexican customs administration may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Customs officer who issued the notification of the verification visit, unless a longer period is requested and agreed to by Customs. Such a postponement shall not constitute a failure to provide written consent within the meaning of paragraph (c) of this section and shall not otherwise by itself constitute a valid basis upon which Customs may:

(1) Consider a material that is used in the production of a good to be a non-originating material; or

(2) Deny preferential tariff treatment to a good.

(e) *Verification visits within the United States*—(1) *Notification and consent procedure.* When the Canadian or Mexican customs administration intends to conduct a verification visit in the United States, notification of such intent will be given, and consent will be required, as provided for under Article 506 of the NAFTA. For purposes of the required notification to Customs, such notification shall be sent to Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–0400.

(2) *Postponement of visit.* Following receipt of notification from the Canadian or Mexican customs administration of its intention to conduct a verification visit in the United States, Customs may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Canadian or Mexican customs administration.

(3) *Designation of observers.* A U.S. exporter or producer, including a producer of a material, whose good or material is the subject of a verification visit by the Canadian or Mexican customs administration shall be allowed to designate two observers to be present during the visit, subject to the following conditions:

(i) The U.S. exporter or producer shall not be required to designate observers;

(ii) There shall be no restriction on the class of persons that may be designated as observers by the U.S. exporter or producer;

(iii) The observers to be present are designated in the written consent to the proposed visit or subsequent thereto;

(iv) The observers do not participate in the verification visit in a manner other than as passive observers;

(v) The presence of observers shall in no way affect the right to have legal counsel or other advisors present during the visit;

(vi) There shall be no obligation on the part of the United States government or on the part of the Canadian or Mexican government to designate observers from its staff, even when the U.S. exporter or producer fails to, or specifically declines to, designate observers; and

(vii) The failure of the U.S. exporter or producer to designate observers shall not result in the postponement of the visit.

§ 181.75 Issuance of origin determination.

(a) *General.* Except in the case of a pattern of conduct within the meaning of § 181.76(c) of this part, following receipt and analysis of the results of an origin verification initiated under § 181.72(a) of this part in regard to a good imported into the United States and prior to denying preferential tariff treatment on the import transaction which gave rise to the origin verification, Customs shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good. Subject to paragraph (b) of this section, the written origin determination shall be sent within 60 calendar days after conclusion of the origin verification process, unless circumstances require additional time, and shall set forth:

(1) 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;

(2) Subject to the provisions of § 181.131 of this part and except in the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire sent under § 181.72 of this part, a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(3) With specific reference to the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in the appendix to this part, the legal basis for the determination.

(b) *Negative origin determinations.* If Customs determines, as a result of an origin verification initiated under § 181.72(a) of this part, that the good which is the subject of the verification does not qualify as an originating good, the written determination required under paragraph (a) of this section:

(1) Shall be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; and

(2) Shall, in addition to the information specified in paragraph (a) of this section, set forth the following:

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

(ii) The specific date after which preferential tariff treatment will be denied, as established in accordance with § 181.76(a)(1) of this part;

(iii) The period, established in accordance with § 181.76(a)(1) of this part, during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(iv) A statement advising the exporter or producer of the right to file a protest under 19 U.S.C. 1514 and part 174 of this chapter:

(A) Within 90 days after notice of liquidation is provided pursuant to part 159 of this chapter; or

(B) In cases where the negative origin determination does not result in a liquidation, within 90 days after the date of issuance of the written determination.

§ 181.76 Application of origin determinations.

(a) *General.* Except as otherwise provided in this section, an origin determination may be applied upon issuance of the determination under § 181.75 of this part.

(b) *Negative origin determinations.* In the case of a negative origin determination issued under § 181.75(b) of this part:

(1) The date on which preferential tariff treatment may be denied shall be no earlier than 30 calendar days from the date on which:

(i) Receipt of the written determination by the exporter or producer is confirmed, if a request under § 181.75(b)(1) of this part has been made; or

(ii) The written determination is sent by Customs, if no request under § 181.75(b)(1) of this part has been made; and

(2) Before denying preferential tariff treatment, Customs shall take into account any comments or additional information provided by the exporter or producer during the period established in accordance with paragraph (b)(1) of this section.

(c) *Cases involving a pattern of conduct.* Where multiple origin verifications initiated under § 181.72(a) of this part indicate a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good imported into the United States qualifies as an originating good, Customs may deny subsequent claims for preferential tariff treatment on identical goods exported or produced by such person until that person establishes compliance with the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in this part, provided that advance written notice of the intent to deny such claims is given to the importer. For purposes of this paragraph, a ''pattern of conduct'' means repeated instances of

false or unsupported representations by an exporter or producer as established by Customs on the basis of not fewer than two origin verifications of two or more importations of the good that result in the issuance of not fewer than two written determinations issued to that exporter or producer pursuant to § 181.75 of this part which conclude, as a finding of fact, that Certificates of Origin completed and signed by that exporter or producer with respect to identical goods contain false or unsupported representations.

(d) *Differing determinations.* Where Customs determines, either as a result of an origin verification initiated under § 181.72(a) of this part or under any other circumstance, that a certain good imported into the United States does not qualify as an originating good based on a tariff classification or a value applied in the United States to one or more materials used in the production of the good, including a material used in the production of another material that is used in the production of the good, which differs from the tariff classification or value applied to the materials by the country from which the good was exported, the Customs determination shall not become effective until Customs provides written notification thereof both to the U.S. importer of the good and to the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based.

(e) *Applicability of a determination to prior importations.* Customs shall not apply a determination made under paragraph (c) of this section to an importation made before the effective date of the determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the NAFTA or any other ruling on the tariff classification or on the value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely and on which that person did in fact rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A ''ruling'' on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Codigo Fiscal de la Federacion and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) ''Consistent treatment'' means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (d) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (d) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (d) of this section.

(f) *Detrimental reliance.* If Customs proposes to deny preferential tariff treatment to a good pursuant to a determination made under paragraph (d) of this section, Customs shall postpone the application of the determination for a period not exceeding 90 calendar days from the date of issuance of the determination where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

Subpart H—Penalties

§ 181.81 Applicability to NAFTA transactions.

Except as otherwise provided in § 181.82 of this part, 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 shall also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the NAFTA.

§ 181.82 Exceptions to application of penalties.

(a) *General.* A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) *''Voluntarily'' defined*—(1) *General.* For purposes of paragraph (a) of this section, 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:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in § 162.74(g) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud.* Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph (b)(2), the term ''fraud'' shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement.* For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be

accompanied by a written statement which:

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

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

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

(iv) 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 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 Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall 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 (b)(3) of this section, provided that:

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

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall 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 Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *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 the regulations issued thereunder.

Subpart I—Advance Ruling Procedures

§ 181.91 Applicability.

This subpart sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico may request and obtain an advance ruling on a NAFTA transaction only in accordance with the provisions of this subpart whenever the requested ruling involves a subject matter specified in § 181.92(b)(6) of this part. Accordingly, the provisions of this subpart shall apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in § 181.92(b)(6).

§ 181.92 Definitions and general NAFTA advance ruling practice.

(a) *Definitions.* For purposes of this subpart:

(1) An *advance ruling* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that interprets and applies the provisions of NAFTA to a specific set of facts involving any subject matter specified in § 181.92(b)(6) of this part. An ''advance ruling letter'' is an advance ruling issued in response to a written request and set forth in a letter addressed to the person making the request or his designee. A ''published advance ruling'' is an advance ruling which has been published in full text in the Customs Bulletin.

(2) An *authorized agent* is a person expressly authorized by a principal to act on his or her behalf. An advance ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before Customs as an agent in connection with an advance ruling request may be required to present evidence of his or her authority to represent the principal. The foregoing requirements will not apply to an individual representing his or her full-time employer or to a bona-fide officer, director or other qualified representative of a corporation, association, or organized group.

(3) The term *Headquarters Office*, means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, DC.

(4) An *information letter* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that does no more than call attention to a well-established interpretation of principles under the NAFTA, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for an advance ruling when:

(i) The request suggests that general information, rather than an advance ruling, is actually being sought;

(ii) The request is incomplete or otherwise fails to meet the requirements set forth in this subpart; or

(iii) The requested advance ruling cannot be issued for any other reason.

(5) A *NAFTA transaction* is an act or activity to which the NAFTA provisions apply. A ''prospective'' NAFTA transaction is one that is merely contemplated or is currently being undertaken but has not resulted in any arrival or in the filing of any entry or entry summary or other document or in any other act so as to bring the transaction, or any part of it, under the jurisdiction of any Customs office. A ''current'' NAFTA transaction is one which is presently under consideration by a field office of Customs. A ''completed'' NAFTA transaction is one which has been acted upon by a Customs field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest or other review as provided in the applicable Customs laws and regulations. An ''ongoing'' NAFTA transaction is a series of identical, recurring transactions, consisting of current and completed transactions where future transactions are contemplated.

(6) The term *National Commodity Specialist Division* means the National Commodity Specialist Division, United States Customs Service, New York, New York.

(b) *General advance ruling practice.* An advance ruling may be requested under the provisions of this subpart with respect to prospective NAFTA transactions. An advance ruling will be based on the facts and circumstances presented by the requester.

(1) *Prospective NAFTA transactions.* It is in the interest of the sound administration of the NAFTA that persons engaging in any transaction affected by NAFTA fully understand the consequences of that transaction prior to its consummation. For this reason, Customs will give full and careful consideration to written requests from importers in the United States and exporters or producers in Canada or Mexico for advance rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law or other appropriate information.

(2) *Current or ongoing NAFTA transactions.* A question arising in connection with a NAFTA transaction already before a Customs field office by reason of arrival, entry or otherwise will be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the NAFTA or the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that field office may, if it believes it appropriate, forward the question to the Headquarters Office for consideration.

(3) *Completed NAFTA transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed NAFTA transaction, may not be the subject of an advance ruling request under this subpart.

(4) *Oral advice.* Customs will not issue an advance ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing advance rulings, the scope of such advance rulings, the types of transactions with respect to which Customs will issue advance rulings, the scope of the advance rulings which may be issued, or the procedures to be followed in submitting advance ruling requests, as prescribed in this subpart.

(5) *Who may request an advance ruling.* An advance ruling may be requested by any of the following persons (individuals, corporations, partnerships, associations, or other entities or groups) having a direct and demonstrable interest in the question or questions presented in the advance ruling request, or by the authorized agent of any such person:

(i) An importer in the United States;

(ii) An exporter or a producer of a good in Canada or Mexico; or

(iii) A Canadian or Mexican producer of a material that is used in the production of a good imported into the United States, but only with regard to that material and only in regard to a matter described in paragraphs (b)(6)(i) through (v) and (vii) of this section.

(6) *Subject matter of advance rulings.* Customs shall issue advance rulings under this subpart concerning the following:

(i) Whether materials imported from a country other than the United States, Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification set forth in General Note 12, HTSUS, as a result of production occurring entirely in the United States, Canada and/or Mexico;

(ii) Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part;

(iii) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico, in accordance with the principles set forth in the appendix to this part, for calculating the transaction value of the good or of the materials used in the production of the good;

(iv) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set forth in the appendix to this part, for calculating the net cost of the good or the value of an intermediate material;

(v) Whether a good qualifies as an originating good under General Note 12, HTSUS, and under the appendix to this part;

(vi) Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment in accordance with § 181.64 of this part;

(vii) Whether the proposed or actual marking of a good satisfies country of origin marking requirements under part 134 of this chapter and under the Marking Rules set forth in part 102 of this chapter;

(viii) Whether an originating good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 and Chapter Seven of the NAFTA; and

(ix) Whether a good is a qualifying good under Chapter Seven of the NAFTA.

§ 181.93 Submission of advance ruling requests.

(a) *Form.* A request for an advance ruling should be written in the English language and in the form of a letter. For any subject matter specified in § 181.92(b)(6) (i), (v), (vi), (vii), (viii) or (ix) of this part, the request may be directed either to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, or to the National Commodity Specialist Division, United States Customs Service, 6 World Trade Center, New York, NY 10048. For any subject matter specified in § 181.92(b)(6)(ii), (iii) or (iv) of this part, the request must be directed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229.

(b) *Content*—(1) *General.* Each request for an advance ruling must identify the specific subject matter under § 181.92(b)(6) of this part to which the request relates, must contain a complete statement of all relevant facts relating to the NAFTA transaction and must state that the information presented is accurate and complete. The following facts must be included: the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling. Where the request for an advance ruling is submitted by or on behalf of the importer of the good involved in the transaction, the request must include the name and address of the exporter and, if known, producer of the good. Where the request for an advance ruling is submitted by or on behalf of the exporter of the good involved in the transaction, the request must include the name and address of the producer and importer of the good, if known. Where the request for an advance ruling is submitted by or on behalf of the producer of the good involved in the transaction, the request must include the name and address of the exporter

and importer of the good, if known. In addition, where relevant to the issue that is the subject of the request for an advance ruling, and regardless of the specific nature of the advance ruling requested, the request must include:

(i) A copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued by Customs to the person submitting the request; or

(ii) Sufficient information to enable Customs to classify the good where no advance ruling or other ruling with respect to the tariff classification of the good has been issued by Customs to the person submitting the request. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, and product literature, drawings, photographs or schematics.

(2) *Description of transaction*—(i) *General.* The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

(ii) *Tariff change rulings*—(A) *General.* If the transaction involves the importation of a good or material for which a ruling is requested as to whether a change in tariff classification has occurred, the request should set forth: The principal or chief use of the good or material in the United States and the commercial, common, or technical designation of the good or material; if the good or material is composed of two or more substances, the relative quantity (by both weight and by volume) and value of each substance; any applicable special invoicing requirements set forth in part 141 of this chapter (if known); and any other information which may assist in determining the appropriate tariff classification of the good or material. The advance ruling request should also note, whenever germane, the purchase price of the good or material, and its approximate selling price in the United States. Each individual request for an advance ruling must be limited to five merchandise items, all of which must be of the same class or kind. Only NAFTA tariff change rulings will be issued under this subpart. Tariff classification rulings which do not involve the application of the NAFTA shall be issued under part 177 of this chapter.

(B) *Issues involving a change in tariff classification of a material.* Where the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of an imported good undergo an applicable change in tariff classification, the request must list each material used in the production of the good and must:

(*1*) Identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;

(*2*) Identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification if known; and

(*3*) Describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

(iii) *NAFTA rulings on regional value content.* NAFTA advance ruling requests, if involving the issue of whether a good satisfies a regional value content requirement under the transaction value method or under the net cost method, or under both methods, as provided for in General Note 12, HTSUS, and in the appendix to this part, must specify each method under which eligibility is sought. Where the transaction value method is specified, the advance ruling request must include: information sufficient to calculate the transaction value of the good in accordance with schedule II of the appendix to this part with respect to the transaction of the producer of the good, adjusted to an F.O.B. basis; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used by the producer in the production of the good in accordance with the provisions of section 7 and, where applicable, section 6(10) of the appendix to this part; a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status; information sufficient to permit an examination of the factors enumerated in schedule III or VIII of the appendix to this part where the advance ruling request involves an issue of whether, with respect to the good or material under the applicable schedule, the transaction value is acceptable; and information sufficient for any other circumstance to make any determination relevant to the application of the regional value content requirement to the good. Where the net cost method is specified, the advance ruling request must include: a list of all product, period and other costs relevant to determining the total cost of the good as defined in the appendix to this part; a list of all excluded costs to be subtracted from the total cost of the good as provided in the appendix to this part; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used in the production of the good, in accordance with section 7 of the appendix to this part; the basis for any allocation of costs in accordance with schedule VII of the appendix to this part; the period over which the net cost calculation is to be made; and any other information relevant to determining the appropriate value of any cost under this part. Where the advance ruling request concerns only the calculation of an element of a regional value content formula, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only contain the following: the information in paragraph (b)(1), other than the information specified in paragraph (b)(1)(i) or (b)(1)(ii); the information in paragraph (b)(5); and any information in this paragraph (b)(2)(iii) which is relevant to the issue that is the subject of the request.

(iv) *NAFTA rulings on producer materials. W*here the advance ruling request involves an issue with respect to an intermediate material under Article 402(10) of the NAFTA (see section 7(4) of the appendix to this part), the request must contain sufficient information to determine the origin and value of the material in accordance with Article 402(11) of the NAFTA (see section 7(6) of the appendix to this part). Where the advance ruling request is submitted by a Canadian or Mexican producer of a material under § 181.92(b)(5)(iii) of this part and concerns only the origin of such material, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only include the following: the information in paragraph (b)(1), including any information specified in paragraph (b)(1)(i) or (b)(1)(ii) which is relevant to the issue that is the subject of the request; any information in paragraph (b)(2)(ii)(B) which is relevant to the issue that is the subject of the request; a sample as provided for in paragraph (b)(3) if relevant to the issue that is the subject of the request; and the information in paragraph (b)(5).

(3) *Samples.* Each request for an advance ruling should be accompanied by photographs, drawings, or other

pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CAS number, and related information. A sample submitted in connection with a request for an advance ruling becomes a part of the Customs file in the matter and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request.

(4) *Related documents.* If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the advance ruling request become a part of the Customs file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

(5) *Prior or current transactions.—(i) General.* Each request for an advance ruling must state:

(A) Whether, to the knowledge of the person submitting the request, the same transaction or issue, or one identical to it, has ever been considered, or is currently being considered by any Customs office;

(B) Whether, to the knowledge of the person submitting the request, the issue involved has ever been, or is currently, the subject of:

(*1*) Review by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom, or review by a judicial or quasi-judicial body in Canada or Mexico;

(*2*) A verification of origin performed in the United States, Canada or Mexico;

(*3*) An administrative appeal in the United States, Canada or Mexico; or

(*4*) A request for an advance ruling under this subpart, or a request for an advance ruling in Canada or Mexico under an appropriate authority referred to in § 181.76(d)(1) of this part;

(C) The status or disposition of any matter on which an affirmative statement is made under paragraph (b)(5)(i)(B) of this section; and

(D) Whether the transaction described in the advance ruling request is but one of a series of similar and related transactions.

(ii) *Change in status of transaction.* If a prospective transaction which is the subject of an advance ruling request becomes a current transaction, the person who submitted the request shall so notify the office processing the request.

(6) *Statement of position.* If the request for an advance ruling asks that a particular determination or conclusion be reached in the advance ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be issued until all trade secret, privilege or confidentiality issues are resolved (see § 181.99(a)(3) of this part).

(c) *Signing; instruction as to reply.* The request for an advance ruling must be signed by a person authorized to make the request, as described in § 181.92(b)(5) of this part. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* Customs will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in § 181.99 of this part. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

§ 181.94 Nonconforming requests for advance rulings.

A person submitting a request for an advance ruling that does not comply with all of the provisions of this subpart will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the advance ruling request to the requirements referred to in the notice. The Customs file with respect to advance ruling requests which are not brought into compliance with the provisions of this subpart within the period of time allowed will be administratively closed and the request removed from active consideration. A request for an advance ruling that is removed from active consideration by reason of failure to comply with the provisions of this subpart may be treated as withdrawn. A failure to comply with the provisions of this subpart will result in the rejection of the advance ruling request with the notice specifying the deficiencies.

§ 181.95 Oral discussion of issues.

(a) *General.* A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any

argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

(b) *Time, place and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his or her place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for an advance ruling to provide for inclusion in the Customs file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

§ 181.96 Change in status of transaction.

Each person submitting a request for an advance ruling in connection with a NAFTA transaction must immediately advise Customs in writing of any change in the status of that transaction upon becoming aware of the change. In particular, Customs must be advised when any transaction described in the advance ruling request as prospective becomes current and under the jurisdiction of a Customs field office. In addition, any person engaged in a NAFTA transaction coming under the jurisdiction of a Customs field office who has previously requested a NAFTA advance ruling with respect to that transaction must advise the field office of that fact.

§ 181.97 Withdrawal of NAFTA advance ruling requests.

Any request for an advance ruling may be withdrawn by the person submitting it at any time before the issuance of an advance ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs file and will not be returned. In addition, the Headquarters Office may forward, to Customs field offices which have or may have jurisdiction over the transaction to which the advance ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs file.

§ 181.98 Situations in which no NAFTA advance ruling may be issued.

(a) *General.* No advance ruling letter will be issued in response to a request therefor which fails to comply with the provisions of this subpart. No advance ruling letter will be issued in regard to a completed transaction.

(b) *Pending matters.* Where a request for an advance ruling involves an issue that is under review in connection with an origin verification under subpart G of this part or that is the subject of an administrative review procedure provided for in subpart J of this part or in part 174 of this chapter, Customs may decline to issue the requested advance ruling. In addition, no NAFTA advance ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of an advance ruling letter, provided neither Customs nor any of its officers or agents is named as a party to the action.

§ 181.99 Issuance of NAFTA advance rulings or other advice.

(a) *NAFTA advance ruling letters*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, Customs will, within 120 calendar days of receipt of a request, including any required information supplemental thereto, issue an advance ruling letter in the English language setting forth the position of Customs and the reasons therefor with respect to a specifically described Customs transaction whenever a request for such an advance ruling is submitted in accordance with the provisions of this subpart and it is in the sound administration of the NAFTA provisions to do so. Otherwise, a request for an advance ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or in the form of a laboratory analysis.

(2) *Submission of NAFTA advance ruling letters to field offices.* Any importer engaging in a NAFTA transaction with respect to which an advance ruling letter has been issued under this subpart either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate with the information filed for that transaction that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

(3) *Disclosure of NAFTA advance ruling letters.* No part of the advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103 of this chapter, or shall be deemed to be subject to the confidentiality principle set forth in § 181.121 of this part, unless, as provided in § 181.93(b)(7) of this part, the information claimed to be exempt from disclosure is clearly identified and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to his request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs

will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(4) *Penalties for misrepresented or omitted material facts or for noncompliance.* If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

(b) *Other NAFTA advice and guidance.* The Headquarters Office may on its own initiative from time to time issue other external advice and guidance with respect to issues or transactions arising under the NAFTA which come to its attention. Such NAFTA advice and guidance, which represent the official position of Customs and which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 181.101 of this part. Nothing in this subpart shall preclude Customs from issuing advice and guidance to its field offices concerning the application of the NAFTA.

§ 181.100 Effect of NAFTA advance ruling letters; modification and revocation.

(a) *Effect of NAFTA advance ruling letters*—(1) *General.* An advance ruling letter issued by Customs under the provisions of this subpart represents the official position of Customs with respect to the particular transaction or issue described therein and is binding on all Customs personnel in accordance with the provisions of this subpart until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the advance ruling set forth in the advance ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. An advance ruling letter is generally effective on the date it is issued or such later date as may be specified in the advance ruling and, commencing on its effective date, may be applied to entries for consumption and warehouse withdrawals for consumption which are unliquidated, or to other transactions with respect to which Customs has not taken final action on that date. See, however, paragraph (b) of this section (ruling letters which modify previous advance ruling letters) and § 181.101 of this part (advance ruling letters published in the Customs Bulletin).

(2) *Application of NAFTA rulings to transactions*—(i) *General.* Each NAFTA ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of an advance ruling letter by a Customs field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the advance ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the advance ruling was based, and if the facts are materially different or a condition has not been satisfied, the treatment specified in the advance ruling will not be applied to the actual transaction. If, in the opinion of any Customs field office by whom the transaction is under consideration or review, the advance ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, prior to any final disposition with respect to the transaction by that office. If the transaction described in the NAFTA advance ruling letter and the actual transaction are the same, and any and all conditions set forth in the advance ruling letter have been satisfied, the advance ruling will be applied to the transaction.

(ii) *Tariff change rulings.* Each advance ruling letter concerning whether a change in tariff classification has occurred will be applied only with respect to transactions involving either articles which are identical to the sample submitted with the advance ruling request and reflect the same processing or articles which conform to the description set forth in the advance ruling letter.

(iii) *Regional value content rulings.* Each advance ruling letter concerning the application of a regional value content requirement will be applied only with respect to transactions involving the same merchandise and identical facts.

(3) *Reliance on NAFTA advance rulings by others.* An advance ruling letter is subject to modification or revocation without notice to any person other than the person to whom the letter was addressed. Accordingly, no other person may rely on the advance ruling letter or assume that the principles of that advance ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request an advance ruling under § 181.92(b)(5) of this part may request information as to whether a previously-issued advance ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the advance ruling letter or furnishing other information sufficient to permit the advance ruling letter in question to be identified.

(b) *Modification or revocation of NAFTA advance ruling letters*—(1) *General.* Any NAFTA advance ruling letter may be modified or revoked by Customs Headquarters in any of the following circumstances or for any of the following purposes, provided that written notice of the modification or revocation is given to the person to whom the advance ruling letter was addressed:

(i) If the ruling letter reflects or is based on an error:

(A) Of fact;

(B) In the tariff classification of a good or material that is the subject of the ruling;

(C) In the application of a regional value-content requirement under General Note 12, HTSUS, and under this part;

(D) In the application of the rules for determining whether a good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 or Chapter Seven of the NAFTA;

(E) In the application of the rules for determining whether a good is a qualifying good under Chapter Seven of the NAFTA; or

(F) In the application of the rules for determining whether a good qualifies for duty-free treatment under § 181.64 of this part when the good re-enters the United States after having been exported to Canada or Mexico for repair or alteration;

(ii) If the ruling letter is not in accordance with an interpretation agreed on by the United States, Canada and Mexico regarding Chapter Three or Chapter Four of the NAFTA;

(iii) If there is a change in the material facts or circumstances on which the ruling is based;

(iv) To conform to a modification of Chapter Three, Four, Five or Seven of the NAFTA, or of the Marking Rules, or

of the regulations set forth in this part; or

(v) To conform to a judicial decision or change in domestic law.

(2) *Application of modification or revocation of NAFTA advance ruling letters.* The modification or revocation of a NAFTA advance ruling letter will not be applied to entries or warehouse withdrawals for consumption which were made prior to the effective date of such modification or revocation, except where the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

(3) *Effective dates.* Generally, a NAFTA letter modifying or revoking an earlier advance ruling will be effective on the date it is issued. However, Customs may, upon request or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issuance. Such a delay may be granted at the request of the party to whom the ruling letter was issued, provided such party can demonstrate to the satisfaction of Customs that it relied on the earlier advance ruling in good faith and to its detriment. The evidence of such reliance must cover the period from the date of the letter modifying or revoking the advance ruling back to the date of that advance ruling and must list all transactions claimed to be covered by the modified or revoked advance ruling by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by Customs. Such evidence must also include contracts, purchase orders, or other materials tending to establish that future transactions were arranged based on the earlier advance ruling. The request for delay must specifically identify the prior ruling on which reliance is claimed. All persons requesting a delay will be issued a separate letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, Customs may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the **Customs Bulletin** and individual ruling letters will not be issued.

§ 181.101 Publication of decisions.

Within 90 days after issuing any precedential decision relating to any NAFTA transaction, Customs shall publish the decision in the **Customs Bulletin** or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1, part 103 of this chapter, and § 181.99(a)(3) of this part.

§ 181.102 Administrative and judicial review of advance rulings.

(a) *Administrative review*—(1) *Submission of request for review.* Any person who received an advance ruling issued under this subpart, or an authorized agent of such person, may request administrative review, at Customs Headquarters, of that advance ruling, including any modification or revocation thereof, by letter addressed to the Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229. Such request shall be filed within 30 calendar days after issuance of the advance ruling and shall set forth the following information:

(i) The name and address of the person seeking review and the name and address of his authorized agent if the request is signed by such an agent;

(ii) The Customs identification number or employer identification number in the case of a U.S. importer and authorized agent thereof, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer and authorized agent thereof, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer and authorized agent thereof;

(iii) The number and date of the advance ruling at issue;

(iv) The numbers and dates of any involved entries for consumption or warehouse withdrawals for consumption;

(v) The nature of, and justification for, the objection to the advance ruling set forth distinctly and specifically with respect to each aspect of the advance ruling for which administrative review is sought; and

(vi) Whether an oral discussion of the issues, as provided in § 181.95 of this part, is desired.

(2) *Issuance of review decision.* Customs will normally issue a written decision within 120 days of receipt of the request for administrative review submitted under this section. However, Customs will, upon a reasonable showing of business necessity, issue a written decision within 60 days of receipt of the request for administrative review. For purposes of this paragraph, the date of receipt of the request for administrative review shall be the date on which all information necessary to process the request, including any information provided after submission of the request in connection with a conference, is filed with Customs.

(b) *Judicial review.* Any person whose claims with regard to a request for administrative review of an advance ruling have been denied in whole or in part under this section may seek judicial review by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after the date of mailing of notice of the denial.

Subpart J—Review and Appeal of Adverse Marking Decisions

§ 181.111 Applicability.

This subpart sets forth the circumstances and procedures under which exporters and producers of merchandise imported into the United States may obtain information about, and administrative and judicial review of, an adverse marking decision, as provided for in Article 510 of the NAFTA. This subpart does not apply to the review of advance rulings issued under Article 509 of the NAFTA (see subpart I of this part) or to the review of determinations that a good is not an originating good under General Note 12, HTSUS, and the appendix to this part (see part 174 of this chapter).

§ 181.112 Definitions.

For purposes of this subpart, the following words and phrases have the meanings indicated:

(a) *Adverse marking decision* means a decision made by the port director which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of the NAFTA and which may be protested by the importer pursuant to § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter. Notification of an adverse marking decision is given to an importer in the form of a Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. Examples of adverse marking decisions include determinations by the port director: that an imported article is not a good of a NAFTA country, as determined under the Marking Rules, and that it therefore cannot be marked ''Canada'' or ''Mexico''; that a good of a NAFTA country is not marked in a manner which is sufficiently permanent; and that a good of a NAFTA country does not qualify for an exception from marking specified in Annex 311 of the NAFTA. Adverse marking decisions do not include: decisions issued in response to requests for advance rulings under subpart I of

this part or for internal advice under part 177 of this chapter; decisions on protests under part 174 of this chapter; and determinations that an article does not qualify as an originating good under General Note 12, HTSUS, and the appendix to this part.

(b) An *exporter* of merchandise is an exporter located in Canada or Mexico who must maintain records in that country relating to the transaction to which the adverse marking decision relates. The records must be sufficient to enable Customs to evaluate the merits of the exporter's claim(s) regarding the adverse marking decision.

(c) A *producer* of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

§ 181.113 Request for basis of adverse marking decision.

(a) *Request; form and filing.* The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with the port director who issued the decision. The request should be on letterhead paper in the form of a letter and clearly designated as a ''Request for Basis of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(b) *Content.* The Request for Basis of Adverse Marking Decision letter shall set forth the following information:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;

(3) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(4) The number and date of each entry involved in the request;

(5) A specific description of the merchandise which is the subject of the adverse marking decision; and

(6) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

§ 181.114 Customs response to request.

(a) *Time for response.* The port director will issue a written response to the requestor within 30 days of receipt of a request containing the information specified in § 181.113 of this part. If the request is incomplete, such that the transaction in question cannot be identified, the port director will notify the requestor in writing within 30 days of receipt of the request regarding what information is needed.

(b) *Content.* The response by the port director shall include the following:

(1) A statement concerning the basis for the adverse marking decision;

(2) A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, no statement under paragraph (b)(1) of this section is required;

(3) A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and

(4) A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in § 181.115 of this part or file a petition as provided in § 181.116 of this part.

§ 181.115 Intervention in importer's protest.

(a) *Conditional right to intervene.* An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, if an importer protests the adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which is the subject of the adverse marking decision may intervene in the importer's protest. Such intervention shall not affect any time limits applicable to the protest or delay action on the protest.

(b) *Form and filing of intervention.* In order to intervene in an importer's protest, as provided for in paragraph (a) of this section, the exporter or producer of the merchandise shall file, in triplicate, a typewritten statement of intervention, in English, with the port director with whom the protest was filed. The statement should be on letterhead paper in the form of a letter and should be clearly designated ''NAFTA Exporter or Producer Intervention in Protest''. The statement shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The NAFTA Exporter or Producer Intervention in Protest letter shall include the following:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(3) The number and date of each entry involved in the adverse marking decision;

(4) A specific description of the merchandise which is the subject of the adverse marking decision;

(5) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

(6) A detailed statement of position regarding why the exporter or producer believes the adverse marking decision is contrary to the provision of Annex 311 of the NAFTA;

(7) A statement as to whether a Request for Basis of Adverse Marking Decision was filed under § 181.113 of this part, and if so, the date of such Request and of any Customs response thereto issued under § 181.114 of this part. Copies of the Request and the Customs response shall be submitted, if available;

(8) The number assigned to the importer's protest;

(9) A statement that the intervenor is the exporter or producer of the merchandise that was the subject of the adverse marking decision being protested by the importer and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim(s) regarding the adverse marking decision; and

(10) If the intervenor prefers that the principle of confidentiality set forth in § 181.121 of this part be applied to the information submitted under this section, a statement to that effect. If no such statement is included in the letter, the intervention and information submitted in connection therewith shall be subject to the same treatment as that

provided in the case of requests by all interested parties for consolidation of protests as set forth in § 174.15(b)(1) of this chapter.

(d) *Effect of Intervention.* The rights of the intervenor under this section are subordinate to the importer's protest rights. Accordingly, intervention by an exporter or producer of merchandise will not affect the procedures under part 174 of this chapter, and the importer's elections concerning accelerated disposition and application for further review of the protest will govern how the protest is handled and how the intervention is considered. If the importer withdraws or settles the protest, the exporter or producer has no right to continue the intervention action.

(e) *Action by port director.* If final administrative action has already been taken with respect to the importer's protest at the time the intervention is filed, the port director shall so advise the exporter or producer and, if the importer has filed a civil action in the Court of International Trade as a result of a denial of the protest, the port director shall advise the exporter or producer of that filing and of the exporter's or producer's right to seek to intervene in such judicial proceeding. If final administrative action has not been taken on the protest, the port director shall forward the intervention letter to the Customs office which has the importer's protest under review for consideration in connection with the protest.

(f) *Final disposition.* The intervenor shall be notified in writing of the final disposition of the protest. If the protest is denied in whole or in part, the intervenor shall be furnished a copy of the notice given to the importer under § 174.29.

§ 181.116 Petition regarding adverse marking decision.

(a) *Right to petition.* If the importer does not protest an adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which was the subject of the adverse marking decision may file a petition with Customs requesting reconsideration of the decision. The petition may not be filed until after the importer's time to protest the adverse marking decision has expired (see § 174.12(e) of this chapter for the time limits for filing protests). If the importer filed a protest upon which final administrative action has been taken, the exporter or producer may file a petition under this section, provided that the exporter or producer was not given notice of the pending protest pursuant to § 181.114 of this part. If the importer filed a protest on which final administrative action has not been taken and notice of the pending protest was not provided to the exporter or producer under § 181.114 of this part, a petition filed under this section shall be treated by the port director as an intervention under § 181.115 of this part.

(b) *Form and filing of petition.* A petition under this section shall be typewritten, in English, and shall be filed, in triplicate, with the port director who issued the adverse marking decision. The petition under this subpart should be on letterhead paper in the form of a letter, clearly designated as a ''Petition for NAFTA Review of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The Petition for NAFTA Review of Adverse Marking Decision letter shall contain all the information specified § 181.115 of this part, except for the protest number. It shall also include a statement that petitioner was not notified by Customs in writing of a pending protest.

(d) *Review of petition*—(1) *Review by port director.* Within 60 days of the date of receipt of the petition, the port director shall determine if the petition is to be granted or denied, in whole or in part. If, after reviewing the petition, the port director agrees with all of the petitioner's claims and determines that the initial adverse marking decision was not correct, a written notice granting the petition shall be issued to the petitioner. A description of the merchandise, a brief summary of the issue(s) and the port director's findings shall be forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for publication in the Customs Bulletin. If, after reviewing the petition, the port director determines that the initial adverse marking decision was correct in its entirety, a written notice shall be issued to the petitioner advising that the matter has been forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for further review and decision. All relevant background information, including available samples, a description of the adverse marking decision and the reasons for the decision, and the port director's recommendation shall be furnished to Headquarters.

(2) *Review by Headquarters.* Within 120 days of the date the petition and background information are received at Customs Headquarters, the Director, Tariff Classification Appeals Division, shall determine if the petition is to be granted or denied, in whole or in part, and the petitioner shall be notified in writing of the determination. If the petition is granted in whole or in part, a description of the merchandise, a brief summary of the issue(s) and the director's findings will be published in the Customs Bulletin.

(3) *Effect of granting the petition.* The decision on the petition, if contrary to the initial adverse marking decision, will be implemented with respect to merchandise entered or withdrawn from warehouse for consumption after 30 days from the date on which the notice of determination is published in the Customs Bulletin.

(e) *Pending litigation.* No decision on a petition will be issued under this section with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a decision on a petition under this section, provided neither Customs nor any of its officers or agents is named as a party to the action.

(f) *Judicial review of denial of petition.*

Any person whose petition under this section has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

Subpart K—Confidentiality of Business Information

§ 181.121 Maintenance of confidentiality.

The port director or other Customs officer who has possession of confidential business information collected pursuant to this part shall, in accordance with part 103 of this chapter, maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information.

§ 181.122 Disclosure to government authorities.

Nothing in § 181.121 of this part shall preclude the disclosure of confidential business information to governmental authorities in the United States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

Subpart L—Rules of Origin

§ 181.131 Rules of origin.

(a) The regulations effective October 1, 1995, implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA are contained in the appendix to this part.

(b) If the fiscal year of a producer of goods begins before October 1, 1995, the producer may choose to have the regulations implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA that were in effect prior to October 1, 1995 (see 19 CFR chapter I, 1994 edition, appendix to part 181) continue to apply in regard to all goods produced by that producer for the remainder of that fiscal year.

(c) If a motor vehicle producer's fiscal year that has been chosen by a producer of goods pursuant to section 12(5) of the regulations referred to in paragraph (b) of this section begins before October 1, 1995, the producer of the goods may choose to have those regulations continue to apply in regard to the goods produced by that producer for the remainder of that fiscal year, provided that:

(1) The producer of the goods has made an election under section 12(1) of those regulations or has provided a statement referred to in section 9(6) or 10(8) of those regulations that states the value of non-originating materials determined in accordance with section 12(3) of those regulations; and

(2) The period chosen under section 12(5) of those regulations is the fiscal year of the motor vehicle producer to whom those goods are sold.

Appendix to Part 181—Rules of Origin Regulations

SECTION 1. CITATION

This Appendix may be cited as the *NAFTA Rules of Origin Regulations.*

PART I
SECTION 2. DEFINITIONS AND INTERPRETATION
Definitions

(1) For purposes of this Appendix,

''accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools'' means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

''adjusted to an F.O.B. basis'' means, with respect to a good, adjusted by

(a) deducting

(i) the costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers,

where those costs are included in the transaction value of the good, and

(b) adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment,

where those costs are not included in the transaction value of the good;

''Agreement'' means the *North American Free Trade Agreement;*

''applicable change in tariff classification'' means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule set out in Schedule I for the tariff provision under which the good is classified;

''automotive component'' means a good that is referred to in column I of an item of Schedule V;

''automotive component assembly'' means a good, other than a heavy-duty vehicle, that incorporates an automotive component;

''costs incurred in packing'' means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

''customs value'' means

(a) in the case of Canada, value for duty as defined in the *Customs Act*, except that for purposes of determining that value the reference in section 55 of that Act to ''in accordance with the regulations made under the *Currency Act*'' shall be read as a reference to ''in accordance with subsection 3(1) of these Regulations'',

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera,* converted, in the event such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations, and

(c) in the case of the United States, the value of imported merchandise as determined by the Customs Service in accordance with section 402 of the *Tariff Act of 1930,* as amended, converted, in the event such value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations.

''days'' means calendar days, and includes weekends and holidays;

''direct labor costs'' means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

''direct material costs'' means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

''direct overhead'' means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

''enterprise'' means any entity constituted or organized under applicable laws, whether or not for profit and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

''excluded costs'' means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

''fungible goods'' means goods that are interchangeable for commercial purposes and the properties of which are essentially identical;

''fungible materials'' means materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as set out in

(a) in the case of Canada, the *Customs Tariff,*

(b) in the case of Mexico, the *Tarifa de la Ley del Impuesto General de Importación,* and

(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

''heavy-duty vehicle'' means a motor vehicle provided for in any of heading 8701, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and heading 8705 and 8706;

''identical goods'' means, with respect to a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''identical materials'' means, with respect to a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''incorporated'' means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

''indirect material'' means a good used in the production, testing or inspection of a good 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, and includes

(a) fuel and energy,

(b) tools, dies and molds,

(c) spare parts and materials used in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment and supplies,

(f) equipment, devices and supplies used for testing or inspecting the other goods,

(g) catalysts and solvents, and

(h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production;

''interest costs'' means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

''intermediate material'' means a self-produced material that is used in the production of a good and is designated as an intermediate material under section 7(4) ;

''light-duty automotive good'' means a light-duty vehicle or a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use as original equipment in the production of a light-duty vehicle;

''light-duty vehicle'' means a motor vehicle provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8703.21 through 8703.90, 8704.21 and 8704.31;

''listed material'' means a good that is referred to in column II of an item of Schedule V;

''location of the producer'' means,

(a) where the warehouse or other receiving station at which a producer receives materials for use by the producer in the production of a good is located within a radius of 75 km (46.60 miles) from the place at which the producer produces the good, the location of that warehouse or other receiving station, and

(b) in any other case, the place at which the producer produces the good in which a material is to be used;

''material'' means a good that is used in the production of another good, and includes a part or ingredient;

''motor vehicle assembler'' means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles;

''month'' means a calendar month;

''NAFTA country'' means a Party to the Agreement;

''national'' means a natural person who is a citizen or permanent resident of a NAFTA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a ''national of the United States'' as defined in the *Immigration and Nationality Act* on the date of entry into force of the Agreement;

''net cost method'' means the method of calculating the regional value content of a good that is set out in section 6(3);

''non-allowable interest costs'' means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located;

''non-originating good'' means a good that does not qualify as originating under this Appendix;

''non-originating material'' means a material that does not qualify as originating under this Appendix;

''original equipment'' means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is

(a) a good of a tariff provision listed in Schedule IV, or

(b) an automotive component assembly, automotive component, sub-component or listed material;

''originating good'' means a good that qualifies as originating under this Appendix;

''originating material'' means a material that qualifies as originating under this Appendix;

''other costs,'' with respect to total cost, means all costs that are not product costs or period costs;

''packaging materials and containers'' means materials and containers in which a good is packaged for retail sale;

''packing materials and containers'' means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

''payments'' means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

''period costs'' means costs, other than product costs, that are expensed in the period in which they are incurred;

''person'' means a natural person or an enterprise;

''person of a NAFTA country'' means a national, or an enterprise constituted or organized under the laws of a NAFTA country;

''point of direct shipment'' means the location from which a producer of a good normally ships that good to the buyer of the good;

''producer'' means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

''product costs'' means costs that are associated with the production of a good, and includes the value of materials, direct labor costs and direct overhead;

''production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

''related person'' means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses);

''reusable scrap or by-product'' means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

''right to use,'' for purposes of the definition of royalties, includes the right to sell or distribute a good;

''royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where performed, and

(b) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

''sales promotion, marketing and after-sales service costs'' means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

''self-produced material'' means a material that is produced by the producer of a good and used in the production of that good;

''shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

''similar goods'' means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''similar materials'' means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,

(b) were produced in the same country as that material, and (c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''subject to a regional value-content requirement'' means, with respect to a good, that the provisions of this Appendix that are applied to determine whether the good is an originating good include a regional value-content requirement;

''sub-component'' means a good that comprises a listed material and one or more other materials or listed materials;

''tariff provision'' means a heading, subheading or tariff item;

''territory'' means, with respect to

(a) Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources,

(b) Mexico,

(i) the states of the Federation and the Federal District,

(ii) the islands, including the reefs and keys, in adjacent seas,

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,

(vi) the space located above the national territory, in accordance with international law, and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and

(c) 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;

''total cost'' means the total of all product costs, period costs and other costs incurred in the territory of one or more of the NAFTA countries;

''transaction value method'' means the method of calculating the regional value content of a good that is set out in subsection 6(2);

''used'' means used or consumed in the production of a good;

''verification of origin'' means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act,*

(b) in the case of Mexico, Article 506 of the Agreement, and

(c) in the case of the United States, section 509 of the *Tariff Act* of 1930, as amended.

Interpretation: ''similar''

(2) For purposes of the definitions of ''similar goods'' and ''similar materials,'' the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for purposes of determining whether goods or materials are similar.

Interpretation: terms used to refer to HTSUS; use of term "books"

(3) For purposes of this Appendix,

(a) ''chapter,'' unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) ''heading'' refers to any four-digit number, or the first four digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(c) ''subheading'' refers to any six-digit number, or the first six digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(d) ''tariff item'' refers to any eight-digit number set out in the column ''Heading/Subheading'' in the Harmonized System;

(e) any reference to a tariff item in Chapter Four of the Agreement or this Appendix that includes letters shall be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each NAFTA country; and

(f) ''books'' refers to,

(i) with respect to the books of a person who is located in a NAFTA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the NAFTA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards.

Use of Examples to illustrate the application of a provision

(4) Where an example, referred to as an ''Example,'' is set out in this Appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

References to domestic laws

(5) Except as otherwise provided, references in this Appendix to domestic laws of the NAFTA countries apply to those laws as they may be amended or superseded.

Calculation of total cost

(6) For purposes of sections 5(9), 6(11) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in paragraphs (b) (i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, shall be the value determined in accordance with section 7(1),

(ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated shall be calculated in accordance with section 7(6),

(iii) the value of indirect materials and the value of packing materials and containers shall be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), shall be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the good shall be deducted from total cost, and losses related to currency conversion that are related to the production of the good shall be included in total cost; and

(e) the value of materials with respect to which production is accumulated under section 14 shall be determined in accordance with that section.

(7) For purposes of calculating total cost under sections 5(9) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) where the regional value content of the good is calculated on the basis of the net cost method and the producer has chosen under section 6(15), 11 (1), (3) or (6), 12(5) or 13(4) to calculate the regional value content over a period, the total cost shall be calculated over that period; and

(b) in any other case, the producer may choose that the total cost be calculated over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year.

(8) A choice made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the choice is made.

(9) Where a producer chooses a one, three or six month period under subsection (7) with respect to a good or material, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) With respect to a good exported to a NAFTA country, a choice to average is considered to have been made

(a) in the case of a choice referred to in section 11 (1), (3) or (6) or 13(4), if the choice is received by the customs administration of that NAFTA country; and

(b) in the case of a choice referred to in section 2(7), 6(15) or 12(1), if the customs administration of that NAFTA country is informed in writing during the course of a verification of the origin of the good that the choice has been made.

SECTION 3. CURRENCY CONVERSION

(1) Where the value of a good or a material is expressed in a currency other than the currency of the country in which the producer of the good is located, that value shall be converted to the currency of the country in which that producer is located on the basis of

(a) in the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for purposes of recording that sale or purchase, as the case may be; and

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title *''TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana''*, for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) Where a producer of a good has a statement referred to in section 9, 10 or 14 that includes information in a currency other than the currency of the country in which that producer is located, the currency shall be converted to the currency of the country in which the producer is located on the basis of

(a) if the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange used by the producer for purposes of recording the purchase;

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title *''TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana''*, for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title *''TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana''*, for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 4. ORIGINATING GOODS

Identification of goods which are ''wholly obtained or produced''

(1) A good originates in the territory of a NAFTA country where the good is

(a) a mineral good extracted in the territory of one or more of the NAFTA countries;

(b) a vegetable or other good harvested in the territory of one or more of the NAFTA countries;

(c) a live animal born and raised in the territory of one or more of the NAFTA countries;

(d) a good obtained from hunting, trapping or fishing in the territory of one or more of the NAFTA countries;
(e) fish, shellfish or other marine life taken from the sea by a vessel registered or recorded with a NAFTA country and flying its flag;
(f) a good produced on board a factory ship from a good referred to in paragraph (e), where the factory ship is registered or recorded with the same NAFTA country as the vessel that took that good and flies that country's flag;
(g) a good taken by a NAFTA country or a person of a NAFTA country from or beneath the seabed outside the territorial waters of that country, where a NAFTA country has the right to exploit that seabed;
(h) a good taken from outer space, where the good is obtained by a NAFTA country or a person of a NAFTA country and is not processed outside the territories of the NAFTA countries;
(i) waste and scrap derived from
(i) production in the territory of one or more of the NAFTA countries, or
(ii) used goods collected in the territory of one or more of the NAFTA countries, where those goods are fit only for the recovery of raw materials; or
(j) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (a) through (i), or from the derivatives of such a good, at any stage of production.

Goods made from non-originating materials: change in tariff classification requirement; regional value-content requirement

(2) A good originates in the territory of a NAFTA country where
(a) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a change in tariff classification, and the good satisfies all other applicable requirements of this Appendix;
(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries and the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies both a change in tariff classification and a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix; or
(c) the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix.

Goods made exclusively from originating materials

(3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

Exceptions to the change in tariff classification requirement

(4) A good originates in the territory of a NAFTA country where
(a) except in the case of a good provided for in any of Chapters 61 through 63,
(i) the good is produced entirely in the territory of one or more of the NAFTA countries,
(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because the materials were imported together, whether or not with originating materials, into the territory of a NAFTA country as an unassembled or disassembled good, and were classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System,
(iii) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and
(iv) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I; or
(b) except in the case of a good provided for in any of Chapters 61 through 63,
(i) the good is produced entirely in the territory of one or more of the NAFTA countries,
(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because
(A) those materials are provided for under the Harmonized System as parts of the good, and
(B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,
(iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),
(iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,
(v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and
(vi) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I.

Interpretation: heading or subheading which provides for both a good and parts of the good

(5) For purposes of subsection (4)(b),

(a) the determination of whether a heading or subheading provides for a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) where, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated ''Parts'', a subheading designated ''Other'' under that heading shall be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) For purposes of subsection (2), where Schedule I sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

Special rule for certain goods

(7) A good originates in the territory of a NAFTA country if the good is referred to in Table 308.1.1 of Section B of Annex 308.1 to Chapter Three of the Agreement and is imported from the territory of a NAFTA country at a time when the NAFTA countries' most-favored-nation rate of duty for that good is in accordance with paragraph 1 of Section A of that Annex.

Self-produced material may be a material for determining applicability of rules of origin

(8) For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the self-produced material is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good.

(9) The following example is an ''Example'' as referred to in section 2(4).

Example: section 4(8), Self-produced Materials as Materials for Purposes of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a NAFTA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For purposes of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

SECTION 5. DE MINIMIS

De minimis rule for non-originating materials that do not undergo subject to authorization, a required tariff change

(1) Except as otherwise provided in subsection (4), a good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven percent

(a) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(b) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule,

provided that,

(c) if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and

(d) the good satisfies all other applicable requirements of this Appendix.

(2) For purposes of subsection (1), where

(a) Schedule I sets out two or more alternative rules for the tariff provision under which the good is classified, and

(b) the good, in accordance with subsection (1), is considered to originate under one of those rules,

the good is not required to satisfy the requirements specified in any alternative rule referred to in paragraph (a).

(3) For purposes of subsection (1), in the case of a good that is provided for in heading 2402, the percentage shall be nine percent instead of seven percent.

Exceptions

(4) Subsections (1) and (2) do not apply to

(a) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4;

(b) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in any of tariff items 1901.10.10 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.10 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids), heading 2105 and tariff items 2106.90.05, 2106.90.13, 2106.90.41, 2106.90.51 and 2106.90.61 (preparations containing over 10 percent by weight of milk solids), 2202.90.10 and 2202.90.20 (beverages containing milk) and 2309.90.31 (animal feeds containing over 10 percent by weight of milk solids);

(c) a non-originating material provided for in any of heading 0805 and subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.30 and tariff items 2106.90.16 and 2106.90.17 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) and 2202.90.30, 2202.90.35 and 2202.90.36 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

(d) a non-originating material provided for in Chapter 9 that is used in the production of a good provided for in tariff item 2101.10.21 (instant coffee, not flavored);

(e) a non-originating material provided for in Chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, 1512, 1514 and 1515;

(f) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703;

(g) a non-originating material provided for in Chapter 17 or heading 1805 that is used in the production of a good provided for in subheading 1806.10; (h) a non-originating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in any of headings 2207 through 2208;

(i) a non-originating material that is used in the production of a good provided for in any of tariff item 7321.11.30 (gas stove or range), subheadings 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29, Mexican tariff item 8479.82.03 (trash compactors) or Canadian or U.S. tariff item 8479.89.55 (trash compactors), and tariff item 8516.60.40 (electric stove or range);

(j) a printed circuit assembly that is a non-originating material used in the production of a good, where the applicable change in tariff classification for the good places restrictions on the use of that non-originating material, such as by prohibiting, or limiting the quantity of, that non-originating material;

(k) a non-originating material that is a single juice ingredient provided for in heading 2009 that is used in the production of a good provided for in any of subheading 2009.90 and tariff items 2106.90.18 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) and 2202.90.37 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins);

(l) a non-originating material that is used in the production of a good provided for in any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(m) a non-originating material that is used in the production of a good provided for in any of Chapters 50 through 63.

De minimis rule for regional value-content requirement

(5) A good that is subject to a regional value-content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where

(a) the value of all non-originating materials used in the production of the good is not more than seven percent

(i) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(ii) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule; and

(b) the good satisfies all other applicable requirements of this Appendix.

De minimis rule for textile goods

(6) A good provided for in any of Chapters 50 through 63, that does not originate in the territory of a NAFTA country because certain fibers or yarns that are 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 as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if

(a) the total weight of all those fibers or yarns is not more than seven percent of the total weight of that component; and

(b) the good satisfies all other applicable requirements of this Appendix.

(7) For purposes of subsection (6),

(a) the component of a good that determines the tariff classification of that good shall be identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of fibers and yarns in that component.

(8) For purposes of subsections (1) and (5), the value of non-originating materials shall be determined in accordance with sections 7(1) through (4).

Calculation of "total cost" for de minimis rules: choice of methods

(9) For purposes of subsection (1)(b) and subsection (5)(a)(ii), the total cost of a good shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule VII.

Calculation of total cost; application of Schedules IX and X for determining value of non-originating materials

(10) Total cost under subsection (9) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection and section 2(7).

(11) For purposes of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, where Schedule X is not being used to determine the value of those non-originating materials,

(a) if the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under section 6(10) that one of the methods set out in Schedule IX be used to determine the value of those non-originating materials for purposes of calculating the regional value content of the good, the value of those non-originating materials shall be determined in accordance with that method;

(b) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement and subsection (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer chooses under section 6(15), 11(1), (3) or (6), 12(1) or 13(4) that the regional value content of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials determined in accordance with that choice, divided by the number of units of the goods with respect to which the choice is made;

(c) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value-content requirement or subsection (5)(a) applies with respect to that good, and

(iii) the producer chooses under section 2(7)(b) that, for purposes of section 5(9), the total cost of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials divided by the number of units produced during that period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

(12) For purposes of subsection (5), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

Examples illustrating de minimis rules

(13) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 5(1)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of copper anodes provided for in heading 7402. The rule set out in Schedule I for heading 7402 specifies a change in tariff classification from any other chapter. There is no applicable regional value-content requirement for this heading. Therefore, in order for the copper anode to qualify as an originating good under the rule set out in Schedule I, Producer A may not use in the production of the copper anode any non-originating material provided for in Chapter 74.

All of the materials used in the production of the copper anode are originating materials, with the exception of a small amount of copper scrap provided for in heading 7404, that is in the same chapter as the copper anode. Under section 5(1), if the value of the non-originating copper scrap does not exceed seven percent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable, the copper anode would be considered an originating good.

Example 2: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of ceiling fans provided for in subheading 8414.51. There are two alternative rules set out in Schedule I for subheading 8414.51, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the ceiling fans are classified and a regional value-content requirement. Therefore, in order for the ceiling fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of ceiling fans and used in the production of the completed ceiling fan must be originating materials.

In this case, all of the non-originating materials used in the production of the ceiling fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of ceiling fans. Under section 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed seven percent of the transaction value of the ceiling fan or the total cost of the ceiling fan, whichever is applicable, the ceiling fan would be considered an originating good. Therefore, under section 5(2), the ceiling fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value-content requirement.

Example 3: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of plastic bags provided for in subheading 3923.29. The rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification from any other heading, except from subheadings 3920.20 or 3920.71, under which certain plastic materials are classified, and a regional value-content requirement. Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the plastic bag to qualify as an originating good, any plastic materials that are classified under subheading 3920.20 or 3920.71 and that are used in the production of the plastic bag must be originating materials.

In this case, all of the non-originating materials used in the production of the plastic bag satisfy the specified change in tariff classification, with the exception of a small amount of plastic materials classified under subheading 3920.71. Section 5(1) provides that the plastic bag can be considered an originating good if the value of the non-originating plastic materials that do not satisfy the specified change in tariff classification does not exceed seven percent of the transaction value of the plastic bag or the total cost of the plastic bag, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the seven percent limit.

However, the rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification and a regional value-content requirement. Therefore, under section 5(1)(c), in order to be considered an originating good, the plastic bag must also, except as otherwise provided in section 5(5), satisfy the regional value-content requirement specified in that rule. As provided in section 5(1)(c), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the plastic bag, will be taken into account in calculating the regional value content of the plastic bag.

Example 4: section 5(5)

Producer A, located in a NAFTA country, primarily uses originating materials in the production of shoes provided for in heading 6405. The rule set out in Schedule I for heading 6405 specifies both a change in tariff classification from any subheading other than subheadings 6401.10 through 6406.10 and a regional value-content requirement.

With the exception of a small amount of materials provided for in Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under section 5(5), if the value of all of the non-originating materials used in the production of the shoes does not exceed seven percent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value-content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

Example 5: section 5(5)

Producer A, located in a NAFTA country, produces barbers' chairs provided for in subheading 9402.10. The rule set out in Schedule I for goods provided for in heading 9402 specifies a change in tariff classification from any other chapter. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, section 4(4)(b) provides, among other things, that, where there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods shall qualify as originating goods if they satisfy a specified regional value-content requirement.

However, under section 5(5), if the value of the non-originating materials does not exceed seven percent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value-content requirement set out in section 4(4)(b)(v).

Example 6: sections 5 (6) and (7)

Producer A, located in a NAFTA country, produces women's dresses provided for in subheading 6204.41 from fine wool fabric of heading 5112. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The rule set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under section 5(6), if the total weight of the non-originating combed wool yarn does not exceed seven percent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

PART III
SECTION 6. REGIONAL VALUE CONTENT

(1) Except as otherwise provided in subsection (6), the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

Transaction Value Method

(2) The transaction value method for calculating the regional value content of a good is as follows:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 7.

Net Cost Method

(3) The net cost method for calculating the regional value content of a good is as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 9 and 10, in accordance with section 7.

VNM does not include value of non-originating materials used in originating material

(4) Except as otherwise provided in section 9 and section 10(1)(d), for purposes of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good shall not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) For purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material shall be included in the value of non-originating materials used in the production of the good; and

(b) where a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials shall be included in the value of non-originating materials.

Net Cost Method required in certain circumstances

(6) The regional value content of a good shall be calculated only on the basis of the net cost method where

(a) there is no transaction value for the good under section 2(1) of Schedule III;

(b) the transaction value of the good is unacceptable under section 2(2) of Schedule III;

(c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales by that producer of identical goods or similar goods, or any combination thereof, to related persons during the six month period immediately preceding the month in which the goods are sold exceeds 85 percent of the producer's total sales to all persons, whether or not related and regardless of location, after ''the producer's total sales''of identical goods or similar goods, or any combination thereof, during that period;

(d) the good is

(i) a motor vehicle provided for in any of headings 8701 and 8702, subheadings 8703.21 through 8703.90 and headings 8704, 8705 and 8706,

(ii) a good provided for in a tariff provision listed in Schedule IV or an automotive component assembly, automotive component, sub-component or listed material, and is for use in a motor vehicle referred to in subparagraph (i), either as original equipment or as an after-market part,

(iii) a good provided for in any of subheadings 6401.10 through 6406.10, or

(iv) a good provided for in tariff item 8469.10.40 (word processing machines);

(e) the exporter or producer chooses to accumulate with respect to the good in accordance with section 14; or

(f) the good is an intermediate material and is subject to a regional value-content requirement.

Option to change from TVM to NCM for calculation of regional value content

(7) If the exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the exporter or producer, is required to be adjusted under section 4 of Schedule II or is unacceptable under section 2(2) of Schedule III, there is no transaction value for the good under section 2(1) of Schedule III or the transaction value method may not be used because of the application of subsection (6)(c), or

(b) the value of any material used in the production of the good, as determined by the exporter or producer, is required to be adjusted under section 5 of Schedule VIII or is unacceptable under section 2(3) of Schedule VIII, or there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value method may not be used to calculate the regional value content of the material because of the application of subsection (6)(c),

the exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 60 days after the producer receives the notification, or such longer period as that customs administration specifies.

Change from NCM to TVM not permitted

(8) If the exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value-content requirement, the exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) Nothing in subsection (7) shall be construed as preventing any review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

Application of Schedule IX for determining value of "identical" non-originating materials under TVM

(10) For purposes of the transaction value method, where non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule IX.

Options for calculating the net cost of a good

(11) For purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule VII, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule VII, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule VII, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

Calculation of total cost

(12) Total cost under subsection (11) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection.

Calculation of net cost; excluded costs

(13) For purposes of calculating net cost under subsection (11),

(a) excluded costs shall be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good shall not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a NAFTA country.

Non-allowable interest; determination under Schedule XI

(14) For purposes of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located shall be made in accordance with Schedule XI.

Use of "averaging" over a period to calculate RVC under NCM; period cannot be changed

(15) For purposes of the net cost method, the regional value content of the good, other than a good with respect to which a choice to average may be made under section 11(1), (3) or (6), 12(1) or 13(4), may be calculated, where the producer chooses to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) The calculation made under subsection (15) shall apply with respect to all units of the good produced during the period chosen by the producer under subsection (15)(a).

(17) A choice made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

Choice of averaging period cannot be changed for remainder of fiscal year

(18) Where a producer chooses a one, three or six month period under subsection (15) with respect to goods, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to those goods.

Choice of net cost method cannot be changed for remainder of the fiscal year

(19) Where the net cost method is required to be used or has been chosen and a choice has been made under subsection (15), the regional value content of the good shall be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

Obligation to perform self-analysis and give notification of changed circumstance if RVC calculated on basis of estimated costs

(20) Except as otherwise provided in sections 11(10), 12(11) and 13(10), where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen in subsection (15)(a), the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value-content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

Option to treat any material as non-originating

(21) For purposes of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

Examples of Calculation of RVC under TVM and NCM

(22) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: example of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

Example 2: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has six factories, all located within the territory of one of the NAFTA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

Example 3: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, located near the center of one of the NAFTA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

Example 4: section 6(3), net cost method

A producer located in NAFTA country A sells Good A that is subject to a regional value-content requirement to a buyer located in NAFTA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of this Appendix, other than the regional value-content requirement, have been met. The applicable regional value-content requirement is 50 percent.

In order to calculate the regional value-content of Good A, the producer first calculates the net cost of Good A. Under section 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:	
Value of originating materials	$30.00
Value of non-originating materials	40.00
Other product costs	20.00
Period costs	10.00
Other costs	0.00
Total cost of Good A, per unit	$100.00
Excluded costs:	
Sales promotion, marketing and after-sales service cost	$5.00
Royalties	2.50
Shipping and packing costs	3.00
Non-allowable interest costs	1.50
Total excluded costs	$12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A, per unit:	$100.00
Excluded costs	−12.00
Net cost of Good A, per unit	$88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{88 - 40}{88} \times 100$$

$$= 54.5\%$$

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value-content of 54.5 percent.

Example 5: section 6(6)(c), net cost method required for certain sales to related persons

On January 15, 1994, a producer located in NAFTA country A sells 1,000 units of Good A to a related person, located in NAFTA country B. During the six month period beginning on July 1, 1993 and ending on December 31, 1993, the producer sold 90,000 units of identical goods and similar goods to related persons from various countries, including that buyer. The producer's total sales of those identical goods and similar goods to all persons from all countries during that six month period were 100,000 units.

The total quantity of identical goods and similar goods sold by the producer to related persons during that six month period was 90 percent of the producer's total sales of those identical goods and similar goods to all persons. Under section 6(6)(c), the producer must use the net cost method to calculate the regional value content of Good A sold in January 1994, because the 85 percent limit was exceeded.

Example 6: section 6(11)(a)

A producer in a NAFTA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000
The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.	
Total cost of Good A and Good B	$9,000
Excluded costs	−1,200
Net cost of Good A and Good B	$7,800

The net cost must then be reasonably allocated, in accordance with Schedule VII, to Good A and Good B.

Example 7: section 6(11)(b)

A producer located in a NAFTA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000

Under section 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

	Allocated to Good A	Allocated to Good B
Total cost ($9,000 for both Good A and Good B)	$5,220	$3,780

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

		Excluded Cost Allocated to Good A	Excluded Cost Allocated to Good B
Total excluded costs:			
Sales promotion, marketing and after-sale service costs	500	290	210
Royalties	200	116	84
Shipping and packing costs	500	290	210
Net cost (total cost minus excluded costs)	.....	$4,524	$3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

Example 8: section 6(11)(c)

A Producer located in a NAFTA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

	Total cost: Good C and Good D (in thousands of dollars)	Allocated to Good C (in thousands of dollars)	Allocated to Good D (in thousands of dollars)
Product costs:			
Value of originating materials	100	0	100
Value of non-originating materials	900	800	100
Other product costs	500	300	200
Period costs (including $420 in excluded costs)	5,679	3,036	2,643
Minus Excluded Costs	420	300	120
Other costs	0	0	0
Total cost (aggregate of product costs, period costs and other costs)	6,759	3,836	2,923

Example 9: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with tools to be used in the production of Material X. The cost of the tools that is recorded on the books of Producer A has been expensed in the current year. Pursuant to section 5(1)(b)(ii) of Schedule VIII, the value of the tools is included in the value of Material X. Therefore, the cost of the tools that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

Example 10: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under section 6(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under section 7(1).

Example 11: section 6(12)

Given the same facts as in example 10, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under section 7(1).

PART IV
SECTION 7. MATERIALS
Valuation of materials used in the production of a good other than certain automotive goods

(1) Except as otherwise provided for non-originating materials used in the production of a good referred to in section 9(1) or 10(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for purposes of calculating the regional value content of a good and for purposes of sections 5(1) and (5), the value of a material that is used in the production of the good shall be

(a) except as otherwise provided in subsection (2), where the material is imported by the producer of the good into the territory of the NAFTA country in which the good is produced, the customs value of the material with respect to that importation, or

(b) where the material is acquired by the producer of the good from another person located in the territory of the NAFTA country in which the good is produced

(i) the transaction value, determined in accordance with section 2(1) of Schedule VIII, with respect to the transaction in which the producer acquired the material, or

(ii) the value determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction in which the producer acquired the material, there is no transaction value under section 2(2) of that Schedule or the transaction value is unacceptable under section 2(3) of that Schedule,

and shall include the following costs if they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Valuation of material if customs value is not in accordance with Schedule VIII

(2) For purposes of subsection (1)(a), where the customs value of the material referred to in that paragraph was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation of that material and, where the costs referred to in subsections (1)(c) through (f) are not included in that value, those costs be added to that value.

Costs recorded on books

(3) For purposes of subsection (1), the costs referred to in subsections (1)(c) through (f) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

Designation of self-produced material as an intermediate material; limitation on designations; designation is optional

(4) Except for purposes of determining the value of non-originating materials used in the production of a light-duty automotive good and except in the case of an automotive component assembly, automotive component or sub-component for use as original equipment in the production of a heavy-duty vehicle, for purposes of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(5) For purposes of subsection (4),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material shall be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in section 14(4), the proviso set out in subsection (4) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (4).

Valuation of an intermediate material

(6) The value of an intermediate material shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule VII.

Calculation of total cost

(7) Total cost under subsection (6) consists of the costs referred to in section 2(6), and is calculated in accordance with that section and section 2(7).

Rescission of a designation during course of verification; option to designate another intermediate material

(8) Where a producer of a good designates a self-produced material as an intermediate material under subsection (4) and the customs administration of a NAFTA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated.

(9) A producer of a good who rescinds a designation under subsection (8)

(a) shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(b) may, not later than 30 days after the customs administration referred to in subsection (8) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the proviso set out in subsection (4).

(10) Where a producer of a good designates another self-produced material as an intermediate material under subsection (9)(b) and the customs administration referred to in subsection (8) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated;

(b) the producer shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(c) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

Indirect Materials; deemed originating; value as recorded on books of producer

(11) For purposes of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) shall be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value-content requirement, for purposes of calculating the net cost under the net cost method, the value of the indirect material shall be the costs of that material that are recorded on the books of the producer of the good.

Packaging Materials and Containers; origin disregarded for tariff change rules

(12) Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, shall be disregarded for purposes of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

Actual originating status considered for RVC requirement; valuation of packaging

(13) Where packaging materials and containers are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value-content requirement, the value of those packaging materials and containers shall be taken into account as originating materials or non-originating materials, as the case may be, for purposes of calculating the regional value content of the good.

(14) For purposes of subsection (13), where packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

Packing materials and containers; disregarded for tariff change rule and for RVC requirement; value as recorded on books

(15) For purposes of determining whether a good is an originating good, packing materials and containers in which the good is packed

(a) shall be disregarded for purposes of determining whether

(i) the non-originating materials used in the production of the good undergo an applicable change in tariff classification, and

(ii) the good satisfies a regional value-content requirement; and

(b) if the good is subject to a regional value-content requirement, the value of the packing materials and containers shall be the costs thereof that are recorded on the books of the producer of the good.

Fungible materials; fungible commingled goods; inventory management methods for determining whether originating

(16) For purposes of determining whether a good is an originating good,

(a) where originating materials and non-originating materials that are fungible materials are used in the production of the good, the determination of whether the materials are originating materials may, at the choice of the producer of the good or the person from whom the producer acquired the materials, be made on the basis of any of the applicable inventory management methods set out in Schedule X; and

(b) where originating goods and non-originating goods that are fungible goods are physically combined or mixed in inventory and prior to exportation do not undergo production or any other operation in the territory of the NAFTA country in which they were physically combined or mixed in inventory, other than unloading, reloading or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the territory of another NAFTA country, the determination of whether the good is an originating good may, at the choice of the exporter of the good or the person from whom the exporter acquired the good, be made on the basis of any of the applicable inventory management methods set out in Schedule X.

Accessories, spare parts and tools; deemed originating for tariff change rule; actual origin applicable for RVC requirement

(17) Accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools are originating materials if the good is an originating good, and shall be disregarded for purposes of determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification or determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification, provided that

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

(b) the quantities and value of the accessories, spare parts or tools are customary for the good, within the industry that produces the good.

(18) Where a good is subject to a regional value-content requirement, the value of accessories, spare parts and tools that are delivered with that good and form part of the good's standard accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

(19) For purposes of subsection (18), where accessories, spare parts and tools are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

Examples illustrating the provisions on materials

(20) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 7(2), Customs Value not Determined in a Manner Consistent with Schedule VIII

Producer A, located in NAFTA country A, imports material A into NAFTA country A. Producer A purchased material A from a middleman located in country B. The middleman purchased the material from a manufacturer located in country B. Under the laws in NAFTA country A that implement the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,* the customs value of material A was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses material A to produce Good C, and exports Good C to NAFTA country D. Good C is subject to a regional value-content requirement.

Under section 4(1) of Schedule VIII, the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value-content requirement. A seller is the person who sells the material being valued to the producer.

The customs value of material A was not determined in a manner consistent with Schedule VIII because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, section 7(2) applies and material A is valued in accordance with Schedule VIII.

Example 2: section 7(5), Value of Intermediate Materials

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement under section 4(2)(b). The producer also produces Material A, which is used in the production of Good B. Both originating materials and non-originating materials are used in the production of Material A. Material A is subject to a change in tariff classification requirement under section 4(2)(a). The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.30 in royalties)	0.50
Other costs	0.10
Total cost of Material A	$10.60

The producer designates Material A as an intermediate material and determines that, because all of the non-originating materials that are used in the production of Material A undergo an applicable change in tariff classification set out in Schedule I, Material A would, under paragraph 4(2)(a) qualify as an originating material. The cost of the non-originating materials used in the production of Material A is therefore not included in the value of non-originating materials that are used in the production of Good B for the purpose of determining the regional value content of Good B. Because Material A has been designated as an intermediate material, the total cost of Material A, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of Good B. The total cost of Good B is determined in accordance with the following figures:

Product costs:	
Value of originating materials	
—intermediate materials	$10.60
—other materials	3.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs	2.50
Other costs	0.10
Total cost of Good B	$28.20

Example 3: section 7(5), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 7(1). The following situations demonstrate how this is achieved:

Situation 1

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer purchases Material A, which is used in the production of Good B, from a supplier located in a NAFTA country. The value of Material A determined in accordance with subsection 7(1) is $11.00. Material A is an originating material. All other materials used in the production of Good B are non-originating materials. The net cost of Good B is determined as follows:

Product costs:	
Value of originating materials (Material A)	$11.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Good B	$23.60
Excluded costs: (included in period costs)	−0.20
Net cost of Good B	$23.40

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$23.40 - \$5.50}{\$23.40} \times 100$$

$$= 76.5\%$$

The regional value content of Good B is 76.5 percent, and Good B, therefore, qualifies as an originating good.

Situation 2

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer does not designate Material A as an intermediate material under subsection 7(4). The net cost of Good B is calculated as follows:

	Costs of Material A (not designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$1.00	$0.00	$1.00
Value of non-originating materials	7.50	5.50	13.00
Other product costs	1.50	6.50	8.00
Period costs (including $0.20 in excluded costs)	0.50	0.50	1.00
Other costs	0.10	0.10	0.20
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	0.20	0.20	−0.40
Net cost of Good B (total cost minus excluded costs)	.....	.....	$22.80

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$22.80 - \$13.00}{\$22.80} \times 100$$

$$= 42.9\%$$

The regional value content of Good B is 42.9 percent, and Good B, therefore, does not qualify as an originating good.

Situation 3

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A, which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer designates Material A as an intermediate material under subsection 7(4). Material A qualifies as an originating material under paragraph 4(2)(a). Therefore, the value of non-originating materials used in the production of Material A is not included in the value of non-originating materials for the purposes of calculating the regional value content of Good B. The net cost of Good B is calculated as follows:

	Costs of Material A (designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$10.60	$0.00	$10.60
Value of non-originating materials	.....	5.50	5.50
Other product costs	.....	6.50	6.50
Period costs (including $0.20 in excluded costs)	.....	0.50	0.50
Other costs	.....	0.10	0.10
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	.....	.20	−0.20
Net cost of Good B (total cost minus excluded costs)	.....	.....	$23.00

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$23.00 - \$5.50}{\$23.00} \times 100$$

$$= 76.1\%$$

The regional value content of Good B is 76.1 percent, and Good B, therefore, qualifies as an originating good.

Example 4: Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in NAFTA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value-content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value-content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 percent.

Producer A sells the switches to Producer B, located in NAFTA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value-content requirement. Producers A and B are not accumulating their production within the meaning of section 14. Producer B is therefore able, under section 7(4), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 14, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

Example 5: Single Producer and Successive Designations of Materials Subject to a Regional Value-Content Requirement as Intermediate Materials

Producer A, located in NAFTA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value-content requirement. Producer A designates Material A as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value-content requirement. Under the proviso set out in section 7(4), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value-content requirement, because Material X was already designated by Producer A as an intermediate material.

Example 6: Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in NAFTA country X, uses non-originating materials in the production of self-produced materials A, B, and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to NAFTA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value-content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value-content requirement, Producer X may, under section 7(4), designate all of the self-produced materials as intermediate materials. The proviso set out in section 7(4) only applies where self-produced materials are used in the production of other self-produced materials and both are subject to a regional value-content requirement.

Example 7: section 7(17)

The following are examples of accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools:

(a) consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,
(b) a carrying case for equipment,
(c) a dust cover for a machine,
(d) an operational manual for a vehicle,
(e) brackets to attach equipment to a wall,
(f) a bicycle tool kit or a car jack,
(g) a set of wrenches to change the bit on a chuck,
(h) a brush or other tool to clean out a machine, and
(i) electrical cords and power bars for use with electronic goods.

Example 8: Value of Indirect Materials that are Assists

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country, and uses it in the production of Good A. Producer A provides to Producer B, at no charge, tools to be used in the production of Material X. The tools have a value of $100 which is expensed in the current year by Producer A.

Material X is subject to a regional value-content requirement which Producer B chooses to calculate using the net cost method. For purposes of determining the value of non-originating materials in order to calculate the regional value content of Material X, the tools are considered to be an originating material because they are an indirect material. However, pursuant to section 7(11) they have a value of nil because the cost of the tools with respect to Material X is not recorded on the books of Producer B.

It is determined that Material X is a non-originating material. The cost of the tools that is recorded on the books of producer A is expensed in the current year. Pursuant to section 5 of Schedule VIII, the value of the tools (see section 5(1)(b)(ii) of Schedule VIII) must be included in the value of Material X by Producer A when calculating the regional value content of Good A. The cost of the tools, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of Good A because it is already included in the value of Material X. The entire cost of Material X, which includes the cost of the tools, is included in the value of non-originating materials for purposes of the regional value content of Good A.

PART V
AUTOMOTIVE GOODS
SECTION 8. DEFINITIONS AND INTERPRETATION

For purposes of this Part,

''after-market parts'' means goods that are not for use as original equipment in the production of light-duty vehicles or heavy-duty vehicles and that are

(a) goods provided for in a tariff provision listed in Schedule IV, or

(b) automotive component assemblies, automotive components, sub-components or listed materials;

''class of motor vehicles'' means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in any of subheading 8701.20, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and headings 8705 and 8706,

(b) motor vehicles provided for in any of subheadings 8701.10 and 8701.30 through 8701.90,

(c) motor vehicles provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8704.21 and 8704.31, and

(d) motor vehicles provided for in any of subheadings 8703.21 through 8703.90;

''complete motor vehicle assembly process'' means the production of a motor vehicle from separate constituent parts, which parts include the following:

(a) a structural frame or unibody,

(b) body panels,

(c) an engine, a transmission and a drive train,

(d) brake components,

(e) steering and suspension components,

(f) seating and internal trim,

(g) bumpers and external trim,

(h) wheels, and

(i) electrical and lighting components;

''first prototype'' means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and

(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

''floor pan of a motor vehicle'' means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the firewall or bulkhead of the motor vehicle and ending

(a) where there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, and

(b) where there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

''heavy-duty automotive good'' means a heavy-duty vehicle or a heavy-duty component;

''heavy-duty component'' means an automotive component or automotive component assembly that is for use as original equipment in the production of a heavy-duty vehicle;

''marque'' means a trade name used by a marketing division of a motor vehicle assembler that is separate from any other marketing division of that motor vehicle assembler;

''model line'' means a group of motor vehicles having the same platform or model name;

''model name'' means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler

(a) to differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) to associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) to denote a platform design;

''new building'' means a new construction to house a complete motor vehicle assembly process, where that construction includes the pouring or construction of a new foundation and floor, the erection of a new frame and roof, and the installation of new plumbing and electrical and other utilities;

''plant'' means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) light-duty vehicles and heavy-duty vehicles,

(b) goods of a tariff provision listed in Schedule IV, and

(c) automotive component assemblies, automotive components, sub-components and listed materials;

''platform'' means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

''received in the territory of a NAFTA country'' means, with respect to section 9(2), the location at which a traced material arrives in the territory of a NAFTA country and is documented for any customs purpose, which, in the case of a traced material imported into

(a) Canada,

(i) where the traced material is imported on a vessel, as defined in section 2 of the *Reporting of Imported Goods Regulations*, is the location at which the traced material is last unloaded from the vessel and reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond by a conveyance other than that vessel, and

(ii) in any other case, is the location at which the traced material is reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond,

(b) Mexico,

(i) where the traced material is imported on a vessel, the location at which the traced material is last unloaded from the vessel and reported for any customs purpose, and

(ii) in any other case, the location at which the traced material is reported for any customs purpose, and

(c) the United States, is the location at which the traced material is entered for any customs purpose, including entered for consumption, entered for warehouse or entered for transportation under bond, or admitted into a foreign trade zone;

''refit'' means a closure of a plant for a period of at least three consecutive months that is for purposes of plant conversion or retooling;

''size category'', with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m^3) but less than 100 cubic feet (2.80 m^3),

(c) 100 cubic feet (2.80 m^3) or more but not more than 110 cubic feet (3.08 m^3),

(d) more than 110 cubic feet (3.08 m^3) but less than 120 cubic feet (3.36 m^3), or

(e) 120 cubic feet (3.36 m^3) or more;

''traced material'' means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported, of a tariff provision listed in Schedule IV;

''underbody'' means the floor pan of a motor vehicle.

SECTION 9. LIGHT-DUTY AUTOMOTIVE GOODS

VNM determined by tracing of certain non-originating materials

(1) For purposes of calculating the regional value content of a light-duty automotive good under the net cost method, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good.

Valuation of traced materials for VNM in the RVC

(2) Except as otherwise provided in subsections (3) and (6) through (8), the value of each of the traced materials that is incorporated into a good shall be

(a) where the producer imports the traced material from outside the territories of the NAFTA countries and has or takes title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(b) where the producer imports the traced material from outside the territories of the NAFTA countries and does not have or take title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(c) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(d) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(e) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or a material that incorporates the traced material from a person in the territory of a NAFTA country who has title to it, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material or the material that incorporates it, and

(ii) states the value of the traced material or a material that incorporates the traced material, determined in accordance with subsection (5), with respect to a transaction that occurs after the customs value of the traced material was determined,

the value of the traced material or the material that incorporates the traced material, determined in accordance with subsection (5), with respect to the transaction referred to in that statement;

(f) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material and states the regional value content of the material,

an amount equal to $VM \times (1 - RVC)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal;

(g) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material but does not state any value with respect to the traced material,

an amount equal to $VM \times (1 - RVCR)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal;

(h) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires a material that

(i) incorporates that traced material,

(ii) was produced in the territory of a NAFTA country, and

(iii) with respect to which an amount was determined in accordance with paragraph (f) or (g),

if the producer of the good has a statement signed by the person from whom the producer acquired that material that states that amount, the amount as determined in accordance with paragraph (f) or (g), as the case may be; and

(i) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement described in any of paragraphs (c) through (h), the value of the traced material or any material that incorporates it, determined in accordance with subsection (5) with respect to the transaction in which the producer acquires the traced material or any material that incorporates it.

Value of traced material if customs value is not in accordance with Schedule VIII

(3) For purposes of subsections (2) (a) through (d), where the customs value of the traced material referred to in those paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be the sum of

(a) the value of the material determined in accordance with Schedule VIII with respect to the transaction in which the person who imported the material from outside the territories of the NAFTA countries acquired it; and

(b) where not included in that value, the costs referred to in subsections (2)(a) (ii) and (iii), subsections (2)(b) (ii) and (iii), subsections (2)(c)(ii) (B) and (C) or subsections (2)(d)(ii) (B) and (C), as the case may be.

Additional costs included in traced value if not already included in customs value

(4) The costs referred to in subsections (2) (a) through (d) and subsection (3) are the following:

(a) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(b) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.

Value of traced material determined under Schedule VIII if value is not customs value

(5) For purposes of subsections (2) (e) through (g) and (i) and subsections (6) and (7), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that paragraph or subsection, or

(b) shall be determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction referred to in that paragraph or subsection, there is no transaction value for the material under section 2(2) of that Schedule, or the transaction value of the material is unacceptable under section 2(3) of that Schedule,

and, where not included under paragraph (a) or (b), shall include taxes, other than duties paid on an importation of a material from a NAFTA country, paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than taxes that are waived, refunded, refundable or otherwise recoverable, including credit against tax paid or payable.

(6) Where it is determined, during the course of a verification of origin of a light-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (2) (f) or (g), that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (2), be determined in accordance with subsection (5) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified

(7) Where any person who has information with respect to a statement referred to in any of subsections (2)(c) through (h) does not allow a customs administration to verify that information during a verification of origin, the value of the material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (5) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material

(8) Where a traced material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a light-duty automotive good, the statement referred to in subsection (2)(c), (d) or (e) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the traced material.

Interpretations and clarifications for provisions applicable to tracing rules for light-duty automotive goods

(9) For purposes of this section,

(a) where a producer, in accordance with section 7(4), designates as an intermediate material any self-produced material used in the production of a light-duty automotive good,

(i) the designation applies solely to the calculation of the net cost of that good, and

(ii) the value of a traced material that is incorporated into that good shall be determined as though the designation had not been made;

(b) the value of a material not listed in Schedule IV, when imported from outside the territories of the NAFTA countries,

(i) shall not be included in the value of non-originating materials that are used in the production of a light-duty automotive good, and

(ii) shall be included in calculating the net cost of a light-duty automotive good that incorporates that material;

(c) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(d) the costs referred to in subsections (2)(a)(ii) and (b)(ii), subsections (2)(c)(ii)(B) and (d)(ii)(B) and subsections (4) and (5) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the light-duty automotive good;

(e) for purposes of calculating the regional value content of a light-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (5) with respect to the transaction in which the producer acquired it; and

(f) any information set out in a statement referred to in subsection (2) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

Examples of application of tracing for light-duty automotive goods

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1:

Nuts and bolts provided for in heading 7318 are imported from outside the territories of the NAFTA countries and are used in the territory of a NAFTA country in the production of a light-duty automotive good referred to in section 9(1). Heading 7318 is not listed in Schedule IV so the nuts and bolts are not traced materials.

Because the nuts and bolts are not traced materials the value, under section 9(1), of the nuts and bolts is not included in the value of non-originating materials used in the light-duty automotive good even though the nuts and bolts are imported from outside the territories of the NAFTA countries.

The value, under section 9(9)(b), of the nuts and bolts is included in the net cost of the light-duty automotive good for the purposes of calculating, under section 9(1), regional value content of the motor vehicle.

Example 2:

A rear view mirror provided for in subheading 7009.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

Subheading 7009.10 is listed in Schedule IV. The rear view mirror is a traced material. For purposes of calculating, under section 9(1), regional value content of the light-duty vehicle, the value of the mirror is included in the value of non-originating materials in accordance with sections 9(2) through (9).

Example 3:

Glass provided for in heading 7005 is imported from outside the territories of the NAFTA countries and is used in the territory of NAFTA country A in the production of a rear view mirror. The rear view mirror is a non-originating good because it fails to satisfy the applicable change in tariff classification.

That rear view mirror is exported to NAFTA country B where it is used as original equipment in the production of a light-duty vehicle. Even though the rear view mirror is a non-originating material and is provided for in a tariff item listed in Schedule IV, it is not a traced material because it was not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle in which the rear view mirror is incorporated, the value of the rear view mirror, under section 9(1), is not included in the value of non-originating materials used in the production of the light-duty vehicle.

Even though the glass provided for in heading 7005 that was used in the production of the rear view mirror and incorporated into the light-duty vehicle was imported from outside the territories of the NAFTA countries, the glass is not a traced material because heading 7005 is not listed in Schedule IV. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the glass, the value of the glass is not included in the value of non-originating materials used in the production of the light-duty vehicle. The value of the rear view mirror would be included in the net cost of the light-duty vehicle, but the value of the imported glass would not be separately included in the value of non-originating materials of the light-duty vehicle.

Example 4:

An electric motor provided for in subheading 8501.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country in the production of a seat frame provided for in subheading 9401.90. The seat frame, with the electric motor attached, is sold to a producer of seats provided for in subheading 9401.20. The seat producer sells the seat to a producer of light-duty vehicles. The seat is to be used as original equipment in the production of that light-duty vehicle.

Subheadings 8501.10 and 9401.20 are listed in Schedule IV; subheading 9401.90 is not. The electric motor is a traced material; the seat is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The seat is a light-duty automotive good referred to in section 9(1). For purposes of calculating, under section 9(1), the regional value content of the seat, the value of traced materials incorporated into it is included in the value of non-originating materials used in the production of the seat. The value of the electric motor is included in that value. (However, the value of the motor would not be included separately in the net cost of the seat because the value of the motor is included as part of the cost of the seat frame.)

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the electric motor is included in the value of non-originating materials used in the production of the light-duty vehicle, even if the seat is an originating material.

Example 5:

Cast blocks, cast heads and connecting rod assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer, who has title to them at the time of importation, and are used by the producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. After the regional value content of the engine is calculated, the engine is an originating good. It is not a traced material because it was not imported from outside the territories of the NAFTA countries. The engine is exported to NAFTA country B, to be used as original equipment by a producer of light-duty vehicles.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine, because heading 8409 is listed in Schedule IV and because the cast blocks, cast heads and connecting rod assemblies were imported into the territory of a NAFTA country and are incorporated into the light-duty vehicle, the value of those materials, which are traced materials, is included in the value of non-originating materials used in the production of the light-duty vehicle, even though the engine is an originating material.

The producer of the light-duty vehicle did not import the traced materials. However, because that producer has a statement referred to in section 9(2)(c) and that statement states the value of non-originating materials of the traced materials in accordance with section 12(2), the producer of the light-duty vehicle may, in accordance with section 9(8), use that value as the value of non-originating materials of the light-duty vehicle with respect to that engine.

Example 6:

Aluminum ingots provided for in subheading 7601.10 and piston assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer and are used by that producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. The aluminum ingots are used by the producer to produce an engine block; the piston assembly is then incorporated into the engine block and the producer designates, in accordance with section 7(4), a short block provided for in heading 8409 as an intermediate material. The intermediate material qualifies as an originating material. The engine that incorporates the short block is exported to NAFTA country B and used as original equipment in the production of a light-duty vehicle. The piston assemblies provided for in heading 8409 are traced materials; neither the engine nor the short block are traced materials because they were not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of the engine, the value of the piston assemblies is included, under section 9(9)(a)(ii), in the value of non-originating materials, even if the intermediate material is an originating material. However, the value of the aluminum ingots is not included in the value of non-originating materials because subheading 7601.10 is not listed in Schedule IV. The value of the aluminum ingots does not need to be included separately in the net cost of the engine because that value is included in the value of the intermediate material, and the total cost of the intermediate material is included in the net cost of the engine.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine (and the piston assemblies), the value of the piston assemblies incorporated into that light-duty vehicle is included in the value of non-originating materials of the light-duty vehicle.

Example 7:

An engine provided for in heading 8407 is imported from outside the territories of the NAFTA countries. The producer of the engine, located in the country from which the engine is imported, used in the production of the engine a piston assembly provided for in heading 8409 that was produced in a NAFTA country and is an originating good. The engine is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The engine is a traced material.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle that incorporates that engine, the value of the engine is included in the value of non-originating materials of that light-duty vehicle. The value of the piston assembly, which was, before its exportation to outside the territories of the NAFTA countries, an originating good, shall not be deducted from the value of non-originating materials used in the production of the light-duty vehicle. Under section 18 (transshipment), the piston assembly is no longer considered to be an originating good because it was used in the production of a good outside the territories of the NAFTA countries.

Example 8:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hoses provided for in heading 4009, which is listed in Schedule IV. The wholesaler takes title to the goods at the wholesaler's place of business in City A. The customs value of the imported goods is $500. All freight, taxes and duties associated with the good to the wholesaler's place of business total $100; the cost of the freight, included in that $100, from the place where it was received in the territory of a NAFTA country to the location of the wholesaler's place of business in City A is $25. The wholesaler sells the rubber hoses for $650 to a producer of light-duty vehicles who uses the goods in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The light-duty vehicle producer pays $50 to have the goods shipped from the location of the wholesaler's place of business in City A to the location at which the light-duty vehicle is produced.

The rubber hoses are traced materials and they are incorporated into a light-duty automotive good. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle,

(1) if the wholesaler takes title to the goods before the first place at which they were received in the territory of a NAFTA country, then the value of non-originating materials, where the light-duty vehicle producer has a statement referred to in section 9(2)(c), would not include the cost of freight from the place where they were received in the territory of a NAFTA country to the location of the wholesaler's place of business: in this situation, the value of non-originating materials would be $575;

(2) if the producer has a statement referred to in section 9(2)(d) that states the customs value of the traced material and, where not included in that price, the cost of taxes, duties, fees and transporting the goods to the place where title is taken, the light-duty vehicle producer may use those values as the value of non-originating materials with respect to the goods: in this situation, the value of non-originating materials would be $600; or

(3) if the wholesaler is unwilling to provide the light-duty vehicle producer with such a statement, the value of non-originating materials with respect to the traced materials will be the value of the materials with respect to the transaction in which the producer acquired them, as provided for in section 9(2)(i), in this instance $650; the costs of transporting the goods from the location of the wholesaler's place of business to the location of the producer will be included in the net cost of the goods, but not in the value of non-originating materials.

Example 9:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV. The wholesaler sells the good to a producer located in the territory of the NAFTA country who uses the hose to produce a power steering hose assembly, also provided for in heading 4009. The power steering hose assembly is then sold to a producer of light-duty vehicles who uses that good in the production of a light-duty vehicle. The rubber hose is a traced material; the power steering hose assembly is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The wholesaler who imported the rubber hose from outside the territories of the NAFTA countries has title to it at the time of importation. The customs value of the good is $3, including freight and insurance and all other costs incurred in transporting the good to the first place at which it was received in the territory of the NAFTA country. Duties and fees and all other costs referred to in section 9(4), paid by the wholesaler with respect to the good, total an additional $1. The wholesaler sells the good to the producer of the power steering hose assemblies for $5, not including freight to the location of that producer. The power steering hose producer pays $2 to have the good delivered to the location of production. The value of the power steering hose assembly sold to the light-duty vehicle producer is $10, including freight for delivery of the goods to the location of the light-duty vehicle producer.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle:

(1) if the motor vehicle producer has a statement referred to in section 9(2)(c) from the producer of the power steering hose assembly that states the customs value of the imported rubber hose incorporated in the power steering hose assembly, and the value of the duties, fees and other costs referred to in section 9(4), the producer may use those values as the value of non-originating materials with respect to that traced good: in this situation, that value would be the customs value of $3 and the cost of duties and fees of $1, provided that the wholesaler has provided the producer of the power steering hose assembly with the information regarding the customs value of the imported good and the other costs;

(2) if the light-duty vehicle producer has a statement from the producer of the power steering hose assembly that states the value of the imported hose, with respect to the transaction in which the power steering hose assembly producer acquires the imported hose from the wholesaler, the light-duty vehicle producer may include that value as the value of non-originating materials, in accordance with section 9(2)(e): in this situation, that value is $5; and the $2 cost of transporting the good from the location of the wholesaler to the location of the producer, because that cost is separately identified, would not be included in the value of non-originating materials of the light-duty vehicle;

(3) if the light-duty vehicle producer has a statement referred to in section 9(2)(f) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(f) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value content is 55 per cent, the value of non-originating materials would be $4.50; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(f) does not allow for the deduction of transportation costs that would otherwise not be non-originating;

(4) if the light-duty vehicle producer has a statement referred to in section 9(2)(g) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(g) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value-content requirement is 50 per cent, the value of non-originating materials would be $5; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(g) does not allow for the deduction of transportation costs that would otherwise not be non-originating; or

(5) if the light-duty vehicle producer does not have a statement referred to in any of sections 9(2)(c) through (h) from the producer of the power steering hose assembly, the light-duty vehicle producer includes in the value of non-originating materials of the vehicles the value, determined in accordance with section 9(2)(i), of the power steering hose assembly: in this situation, that amount would be $10, the cost to the producer of acquiring that material.

Example 10:

A producer of light-duty vehicles located in City C in the territory of a NAFTA country imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV, and uses that good as original equipment in the production of a light-duty vehicle.

The rubber hose arrives at City A in the NAFTA country, but the producer of the light-duty vehicle does not have title to the good; it is transported under bond to City B, and on its arrival in City B, the producer of the light-duty vehicle takes title to it and the good is received in the territory of a NAFTA country. The good is then transported to the location of the light-duty vehicle producer in City C.

The customs value of the imported good is $4, the transportation and other costs referred to in subparagraph 9(2)(b)(ii) to City A are $3 and to City B are $2, and the cost of duties, taxes and other fees referred to in section 9(4) is $1. The cost of transporting the good from City B to the location of the producer in City C is $1. The rubber hose is traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value, under section 9(2)(b), of non-originating materials of that vehicle is the customs value of the traced material and, where not included in that value, the cost of taxes, duties, fees and the cost of transporting the traced material to the place where title is taken. In this situation, the value of non-originating materials would be the customs value of the traced material, $4, the cost of duties taxes and other fees, $1, the cost of transporting the material to City A, $3, and the cost of transporting that material from City A to City B, $2, for a total of $10. The $1 cost of transporting the good from City B to the location of the producer in City C would not be included in the value of non-originating materials of the light-duty vehicle because a person of a NAFTA country has taken title to the traced material.

Example 11:

A radiator provided for in subheading 8708.91 is imported from outside the territories of the NAFTA countries by a producer of light-duty vehicles and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

The radiator is transported by ship from outside the territories of the NAFTA countries and arrives in the territory of the NAFTA country at City A. The radiator is not, however, unloaded at City A and although the radiator is physically present in the territory of the NAFTA country, it has not been received in the territory of a NAFTA country.

The ship sails in territorial waters from City A to City B and the radiator is unloaded there. The light-duty vehicle producer files, from City C in the same country, the entry for the radiator; the radiator enters the territory of the NAFTA country at City B.

Subheading 8708.91 is listed in Schedule IV. The radiator is a traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the radiator is included in the value of non-originating materials of the light-duty vehicle. The costs of any freight, insurance, packing and other costs incurred in transporting the radiator to City B are included in the value of non-originating materials of the light-duty vehicle, including the cost of transporting the radiator from City A to City B. The costs of any freight, insurance, packing and other costs that were incurred in transporting the radiator from City B to the location of the producer are not included in the value of non-originating materials of the light-duty vehicle.

Example 12:

Producer X, located in NAFTA country A, produces a car seat of subheading No. 9401.20 that is used in the production of a light-duty vehicle. The only non-originating material used in the production of the car seat is an electric motor of subheading No. 8501.20 that was imported by Producer X from outside the territories of the NAFTA countries. The electric motor is a material of a tariff provision listed in Schedule IV and thus is a traced material.

Producer X sells the car seat as original equipment to Producer Y, a light-duty vehicle producer, located in NAFTA country B. The car seat is an originating good because the non-originating material in the car seat (the electric motor) undergoes the applicable change in tariff classification set out in a rule that specifies only a change in tariff classification. Consequently, Producer X does not choose to calculate the regional value content of the car seat in accordance with section 12(1).

For purposes of determining, under section 9(1), the value of non-originating materials used in the production of the light-duty vehicle that incorporates the car seat, the value of the electric motor is included even though the car seat qualifies as an originating material.

Producer X provides Producer Y with a statement described in section 9(2)(c), with the value of non-originating material used in the production of the car seat determined in accordance with section 12(3), as is permitted by section 9(8). Producer Y uses that value as the value of non-originating materials used in the production of the light-duty vehicle with respect to the car seat.

Example 13:

This example has the same facts as in Example 12, except that the car seat does not qualify as an originating good under the rule that specifies only a change in tariff classification. Instead, it qualifies as an originating good under a rule that specifies a regional value-content requirement and a change in tariff classification. For purposes of that rule, Producer X chose to calculate the regional value content of the car seat in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(a).

For purposes of the statement described in section 9(2)(c), Producer X determined, as is permitted under section 9(8), the value of non-originating material used in the production of the car seat in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 10. HEAVY-DUTY AUTOMOTIVE GOODS

Determining VNM for the calculation of the RVC for heavy-duty automotive goods

(1) Except as otherwise provided in subsections (3) through (8) and section 12(10)(a), for purposes of calculating the regional value content of a heavy-duty automotive good under the net cost method, the value of non-originating materials used by the producer of the good in the production of the good shall be the sum of

(a) for each listed material that is a non-originating material, is a self-produced material and is used by the producer in the production of the good, at the choice of the producer, either

(i) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that listed material in accordance with Schedule VII,

(ii) the aggregate of each cost that forms part of the total cost incurred with respect to that listed material that can be reasonably allocated to that listed material in accordance with Schedule VII, or

(iii) the sum of

(A) the customs value of each non-originating material imported by the producer and used in the production of the listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(B) the value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired it;

(b) for each listed material that is a non-originating material, is produced in the territory of a NAFTA country and is acquired and used by the producer in the production of the good, at the choice of the producer, either

(i) the value of that non-originating listed material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired the listed material, or

(ii) where the producer of the good has a statement described in clause (A) or (B) with respect to each material that is a non-originating material used in the production of that listed material, the sum of

(A) the customs value of each non-originating material imported by the producer of the listed material and used in the production of that listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), if the producer of the good has a statement signed by the producer of the listed material that states the customs value of that non-originating material and the costs referred to in subsections (2)(c) through (f) that the producer of the listed material incurred with respect to the non-originating material, and

(B) the value of each non-originating material that is not imported by the producer of the listed material, and is acquired and used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired that non-originating material, if the producer of the good has a statement signed by the producer of the listed material that states the value of the acquired material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired the non-originating material;

(c) for each listed material, automotive component assembly, automotive component or sub-component that is imported from outside the territories of the NAFTA countries, and is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating listed material, automotive component assembly, automotive component or sub-component, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating listed material, automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(d) for each automotive component assembly, automotive component or sub-component that is an originating material and is acquired and used by the producer in the production of the good, at the choice of the producer,

(i) the sum of

(A) the value of each non-originating listed material used in the production of the originating material, determined under paragraphs (a) and (b),

(B) the value of each non-originating material incorporated into the originating material, determined under paragraph (c),

(C) the value of each non-originating listed material used in the production of a material referred to in paragraph (e) that is used in the production of the originating material, determined under paragraphs (a) and (b), and

(D) where the value of a non-originating listed material referred to in clause (C), and used in the production of a non-originating automotive component assembly, automotive component or sub-component that is used in the production of the originating material, is not included under clause (C), the value of that automotive component assembly, automotive component or sub-component, determined under paragraph (e)(ii),

if the producer has a statement, signed by the person from whom the originating material was acquired, that states the sum of the values, as determined by the producer of the originating material under paragraphs (a), (b), (c) and (e) of each non-originating material referred to in any of clauses (A) through (D) that is incorporated into that originating material;

(ii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVC)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material and states the regional value content of the material,

(iii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVCR)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material but does not state the value of non-originating materials with respect to that acquired material; or

(iv) the value of that automotive component assembly, automotive component or sub-component determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material;

(e) for each automotive component assembly, automotive component or sub-component that is a non-originating material produced in the territory of a NAFTA country and that is acquired by the producer and used by the producer in the production of the good, at the choice of the producer, either

(i) the sum of the values of the non-originating materials incorporated into that non-originating material that is acquired by the producer, determined under paragraphs (a), (b), (c), (d) and (f), if the producer has a statement, signed by the person from whom the non-originating material was acquired, that states the sum of the values of the non-originating materials incorporated into that non-originating material, determined by the producer of the non-originating material in accordance with paragraphs (a), (b), (c), (d) and (f), or

(ii) the value of that non-originating automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material; and

(f) for each non-originating material that is not referred to in paragraph (a), (b), (c) or (e) and that is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating material, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material.

Application of Schedule VIII to determine VNM; additional costs to be included

(2) For purposes of subsection (1)(a)(ii)(B), subsection (1)(b)(i), subsection (1)(b)(ii)(B), subsections (1)(c)(ii), (1)(d)(ii) through (iv), (1)(e)(ii) and subsection (1)(f)(ii), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that clause, subparagraph or paragraph, or

(b) where, with respect to the transaction referred to in that clause, subparagraph, or paragraph, there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value of the material is unacceptable under section 2(3) of that Schedule, shall be determined in accordance with sections 6 through 11 of that Schedule,

and shall include the following costs where they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing, and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage and customs clearance services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Value of imported material if customs value is not in accordance with Schedule VIII

(3) For purposes of subsections (1)(a)(ii)(A) and (b)(ii)(A) and subsections (1)(c)(i) and (f)(i), where the customs value of an imported material referred to in those clauses or paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in sections (2)(c) through (f) are not included in that value, those costs shall be added to the value of the material.

Option to use section 9 tracing rules in certain circumstances

(4) For purposes of calculating the regional value content of a heavy-duty component, where

(a) a heavy-duty component is produced in the same plant as an automotive component assembly or automotive component that is of the same heading or subheading as that heavy-duty component and is for use as original equipment in a light-duty vehicle, and

(b) it is not reasonable for the producer to know which of the production will constitute a heavy-duty component for use in a heavy-duty vehicle,

the value of the non-originating materials used in the production of the heavy-duty component in that plant may, at the choice of the producer, be determined in the manner set out in section 9.

(5) For purposes of calculating the regional value content of a heavy-duty vehicle, where a producer of such a vehicle acquires, for use by that producer in the production of the vehicle, a heavy-duty component with respect to which the value of non-originating materials has been determined in accordance with subsection (4), the value of the non-originating materials used by the producer with respect to that heavy-duty component is the value of non-originating materials determined under that subsection.

VNM may be redetermined for certain acquired materials

(6) Where it is determined, during the course of a verification of origin of a heavy-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (1)(d)(ii) or (iii) that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (1), be determined in accordance with subsection (2) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified

(7) Where any person who has information with respect to a statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) does not allow a customs administration to verify that information during a verification of origin, the value of any material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (2) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material

(8) Where a heavy-duty component, sub-component or listed material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a heavy-duty automotive good, the statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the heavy-duty component, sub-component or listed material.

Interpretations and clarifications for provisions applicable to rules for determining VNM for heavy-duty automotive goods

(9) For purposes of this section,

(a) for purposes of calculating the regional value content of a heavy-duty automotive good, sub-component or listed material, a producer of such a good may, in accordance with section 7(4), designate as an intermediate material any self-produced material, other than a heavy-duty component or sub-component, that is used in the production of that good;

(b) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(c) this section does not apply to a sub-component for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good;

(d) for purposes of calculating the regional value content of a heavy-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(e) any information set out in a statement referred to in subsections (1)(b)(ii), (d)(i) through (iii) or (e)(i) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located; and

(f) total cost under subsections (1)(a)(i) and (ii) consists of the costs referred to section 2(6), and is calculated in accordance with that section and section 2(7).

Examples of application of rules for determining VNM for heavy-duty automotive goods

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: A listed material is imported from outside the territories of the NAFTA countries

A cast head, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The cast head is a listed material; the engine is an automotive component.

Situation 1: Use of the listed material in an automotive component

For purposes of calculating the regional value content of the engine, the value of listed materials imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the engine. Because the cast head was produced outside the territories of the NAFTA countries, its value, under section 10(1)(c), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the listed material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value, determined under section 10(1)(c), of the cast head, is included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(ii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(iii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the listed material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the cast head, as determined under section 10(1)(c), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Example 2: A material is imported from outside the territories of the NAFTA countries

A rocker arm assembly, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The rocker arm assembly is neither a listed material nor a sub-component; the engine is an automotive component.

Situation 1: Use of the material in an automotive component

For purposes of calculating the regional value content of the engine, the value of non-originating materials that are not listed materials is included in the value of non-originating materials used in the production of the engine. Because the rocker arm assembly was produced outside the territories of the NAFTA countries, it is a non-originating material and its value, under section 10(1)(f), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is not included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(ii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(iii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1) (a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Situation 4: Use of the material in a self-produced automotive component

If the engine is a self-produced material rather than an acquired material, the heavy-duty vehicle producer is using the rocker arm assembly in the production of the heavy-duty vehicle rather than in the production of the engine, because, under section 7(4), the engine cannot be designated as an intermediate material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value, under section 10(1)(f), of the rocker arm assembly is included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 3: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component.

Situation: Use of the automotive component

For purposes of calculating the regional value content of the heavy-duty vehicle in which the transmission is used, the value of the transmission is included in the value of the non-originating materials under section 10(1)(c), regardless of whether the producer imported the transmission or acquired it from someone else in the territory of a NAFTA country.

Example 4: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and combined with an engine to produce an engine-transmission assembly that will be used as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component; the engine-transmission assembly is an automotive component assembly.

Situation: Use of the automotive component assembly

The automotive component assembly is acquired by a producer who uses it in the production of a heavy-duty vehicle. If the automotive component assembly that incorporates the imported transmission is an originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under any of section 10(1)(d) (i), (ii), (iii) and (iv). (See example 1 for more detailed explanations of these provisions.) If the automotive component assembly that incorporates the imported transmission is a non-originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under section 10(1)(e) (i) or (ii). (See example 1 for more detailed explanations of these provisions.)

Regardless of whether the automotive component assembly is an originating material or a non-originating material, the value of the automotive component that was imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the heavy-duty vehicle. The transmission is a non-originating material, and, for purposes of calculating the regional value content of an automotive component assembly or heavy-duty vehicle that incorporates that transmission, the value of the transmission is included in the value of non-originating materials used in the production of the automotive component assembly or heavy-duty vehicle that incorporates it.

Example 5: A material is imported from outside the territories of the NAFTA countries

An aluminum ingot, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of cast block that will be used in an engine that will be used as original equipment in the production of a heavy-duty vehicle. The aluminum ingot is not a listed material; the cast block is a listed material; the engine is an automotive component.

Situation 1: Use of the material in an intermediate material that is a listed material

The engine producer designates the cast block as an intermediate material under section 7(4). For purposes of determining the origin of that cast block, because the aluminum ingot is classified under a different heading than the cast block, the cast block satisfies the applicable change in tariff classification and is an originating material.

Situation 2: Use of the listed material incorporating the material

For purposes of calculating the regional value content of the engine that incorporates that cast block (and thus incorporates the aluminum ingot), the value of non-originating materials is determined under section 10(1). Because none of sections 10(1) (a) through (f) require that a listed material that is an originating material be included in the value of non-originating materials used in the production of a good, the value of the cast block is not included in the value of non-originating materials used in the production of the engine or in the value of non-originating materials used in the production of an automotive component assembly or heavy-duty vehicle that incorporates the engine.

Because section 10(1)(d) does not refer to a listed material that is an originating material, the value of the non-originating aluminum ingot used in the production of the originating cast block is not included in the value of non-originating materials used in the production of any good or material that incorporates the originating cast block.

Example 6: A non-originating listed material is used to produce a sub-component that is used to produce another sub-component

A crankshaft, produced in the territory of NAFTA country A from a forging imported from outside the territories of the NAFTA countries, is a non-originating material. The crankshaft is sold to another producer, located in the same country, who uses it to produce an originating block assembly. That block assembly is sold to another producer, also located in the same country, who uses it to produce a finished block. The finished block is sold to a producer of engines, who is located in NAFTA country B, for use in the production of a heavy-duty vehicle. The crankshaft is a listed material; the block assembly is a sub-component, as is the finished block.

Situation 1: Calculating the regional value content of the finished block

A sub-component is not a heavy-duty automotive good. As referred to in section 10(9)(c), for purposes of calculating the regional value content of the sub-component before it is incorporated into a heavy-duty automotive good, such as when the sub-component is exported from the territory of one NAFTA country to the territory of another NAFTA country, the value of non-originating materials of the sub-component includes only the value of non-originating materials used in the production of that sub-component. Because the block assembly is an originating material, its value is not included in the value of non-originating materials of the finished block, nor is the value of the non-originating crankshaft included in the value of non-originating materials used in the production of the finished block because the crankshaft was used in the production of the block assembly and was not used in the production of the finished block.

Situation 2: Calculating the regional value content of the component that incorporates the finished block

For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates a sub-component, the value of non-originating materials used in the production of the sub-component is determined under section 10(1) (d) or (e) with respect to that sub-component. In this situation, the value, under section 10(1)(b), of the non-originating crankshaft is included in the value of non-originating materials used in the production of the engine. (See examples 1 and 2 for more detailed explanations of sections 10(1) (d) and (e).)

Example 7: A non-listed material is imported from outside the territories of the NAFTA countries and is used in the production of another non-listed material

A bumper part, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and is used in the production of a bumper. The bumper is used in the territory of a NAFTA country as original equipment in the production of a heavy-duty vehicle. Neither a bumper part nor a bumper is a listed material, sub-component, automotive component or automotive component assembly.

Situation 1: The non-listed material is an originating material

The bumper is an originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, neither the value of the imported bumper part nor the value of the bumper is included in the value of the non-originating materials.

Situation 2: The non-listed material is a non-originating material

The bumper is a non-originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(f) with respect to the bumper. In this situation, the value of the bumper is included in the value of non-originating materials of the heavy-duty vehicle. Because a bumper is not a listed material, the producer of the heavy-duty vehicle does not have the option, under section 10(1)(b)(ii), to include only the value of the imported bumper part in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 8:

Situation: Transhipment of a listed material

A producer, located in the territory of a NAFTA country, produces, in that country, a cast head that is an originating good. The producer exports the cast head to outside the territories of the NAFTA territories, where valves, springs, valve lifters, a camshaft and gears are added to it to create a cast head assembly. An engine producer, located in the territory of a NAFTA country, imports the cast head assembly into that country and uses it in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. A cast head is a listed material; a cast head assembly is a sub-component.

For purposes of calculating the regional value content of the engine, the value of the imported cast head assembly is included in the value of non-originating materials under section 10(1)(c). The value of the cast head cannot be deducted from the value determined under section 10(1)(c). Although the cast head was once an originating good, under section 18 when further production was performed with respect to the cast head outside the territories of the NAFTA countries, it was no longer an originating good.

Example 9: A material is imported from outside the territories of the NAFTA countries and a heavy-duty vehicle producer self-produces a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment by the same producer in the production of a heavy-duty vehicle. Although the producer, under section 7(4), designates the water pump as an intermediate material it is a non-originating material because it fails to satisfy the regional value-content requirement. A water pump is a listed material.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the total cost, determined under section 10(1)(a)(i), of the water pump or the value, determined under section 10(1)(a)(iii)(A), of the material imported from outside the territories of the NAFTA countries.

Example 10: A material is acquired and used to produce a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is acquired in the territory of a NAFTA country and is used in that country in the production of a water pump that will be used as original equipment in the production of a heavy-duty vehicle. The producer of the water pump and the producer of the heavy-duty vehicle are separate, unrelated producers, located in the same country. A water pump is a listed material. The producer of the water pump chose to calculate the regional value content of the water pump in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(b). The water pump is a non-originating material because it fails to satisfy the regional value-content requirement.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the value, determined under section 10(1)(b)(i), of the water pump or, if the producer has a statement referred to in section 10(1)(b)(ii)(B), the value, determined under that section, of the material imported from outside the territories of the NAFTA countries.

The producer has a statement referred to in section 10(1)(b)(ii)(B) and chooses to use the value of non-originating material determined under that section. The statement states, as is permitted under section 10(8), the value of non-originating material used in the production of the water pump in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 11. MOTOR VEHICLE AVERAGING

NC and VNM for motor vehicles may be averaged over producer's fiscal year

(1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that

(a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and

(b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required when producer chooses to average for motor vehicles

(2) A choice made under subsection (1) shall

(a) state the category chosen by the producer, and

(i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (9);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

Averaging period

(3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) or (6) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.

(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

Categories of motor vehicles for averaging

(5) The categories referred to in subsection (1) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(c) the same model line of motor vehicles produced in the territory of a NAFTA country.

(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule VI be made in accordance with that schedule.

Timely filing of choice to average

(7) Subject to section 5(4) of Schedule VI, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

Choice to average cannot be rescinded

(8) A choice filed for the period referred to in subsection (1) or (3) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Averaged net cost and VNM included in calculation of RVC on the basis of producer's option to include all vehicles of category or only certain exported vehicles of category

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(11) The following example is an ''Example'' as referred to in section 2(4).

Example:

A motor vehicle producer located in NAFTA country A produces vehicles that fall within a category set out in section 11(5) that is chosen by the producer. The motor vehicles are to be sold in NAFTA countries A, B and C, as well as in country D, which is not a NAFTA country. Under section 11(1), the motor vehicle producer may choose that the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year. The producer may state in the choice the basis of the calculation as described in section 11(9)(a), in which case the calculation would be on the basis of all the motor vehicles produced regardless of where they are destined. Alternatively, the producer may state in the choice the basis of the calculation as described in section 11(9)(b). In this case, the producer would also need to state that the calculation is on the basis of

(a) the motor vehicles produced that are for export to NAFTA countries B and C;

(b) the motor vehicles produced that are for export to only NAFTA country B; or

(c) the motor vehicles produced that are for export to only NAFTA country C.

The calculation would be on the basis as described in the choice.

SECTION 12. AUTOMOTIVE PARTS AVERAGING

NC and VNM for automotive parts may be averaged to determine RVC of parts

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or an automotive component assembly, an automotive component, a sub-component or a listed material, produced in the same plant, may, where the producer of those goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

VNM for each unit in a category of goods for which averaging used

(3) The value of non-originating materials of each unit of the goods

(a) in the category set out in subsection (4) chosen by the producer, and

(b) produced during the period chosen by the producer under subsection (5),

shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

Categories of automotive parts for averaging

(4) The categories referred to in subsection (1)(a) are the following:

(a) original equipment for use in the production of light- duty vehicles;

(b) original equipment for use in the production of heavy-duty vehicles;

(c) after-market parts;

(d) any combination of goods referred to in paragraphs (a) through (c);

(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and

(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

Periods for averaging RVC for automotive parts

(5) The period referred to in subsection (1)(a) is,

(a) with respect to goods referred to in subsection (4) (a), (b) or (d), or subsection (4) (e) or (f) where the goods in that category are in a category referred to in subsection (4) (a) or (b), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period or the fiscal year of the motor vehicle producer to whom those goods are sold; and

(b) with respect to goods referred to in subsection (4)(c), or subsection (4) (e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, the fiscal year of that producer or the fiscal year of the motor vehicle producer to whom those goods are sold.

Choice to average may not be rescinded

(6) A choice made under subsection (1) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

(7) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(a), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for

(a) the remainder of the fiscal year of the motor vehicle producer to whom those goods are sold, where the producer chooses under subsection (9)(a) the fiscal year of that motor vehicle producer; and

(b) the remainder of the fiscal year of the producer of those goods, where the producer does not choose under subsection (9)(a) the fiscal year of the motor vehicle producer to whom the goods are sold.

(8) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(b), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of, at the choice of the producer, the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold.

(9) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods, the producer may,

(a) with respect to goods referred to in subsection (5)(a), at the end of the fiscal year of the motor vehicle producer to whom those goods are sold, choose the fiscal year of that motor vehicle producer; and

(b) with respect to goods referred to in subsection (5)(b), at the end of the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold, as the case may be, choose the producer's fiscal year or the fiscal year of that motor vehicle producer.

Applicable method for averaging VNM under different categories

(10) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4) (d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(11) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

SECTION 13. SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

Changes in regional value content level for automotive goods

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content requirement for a good referred to in paragraph (a) or (b) is as follows:

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

Regional value content level for motor vehicles produced in a new plant or in a refit plant

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

Value of machinery in a new plant

(3) For purposes of subsection (2)(a)(iii), the value of machinery shall be

(a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;

(b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and

(c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

Averaging period for calculation of RVC for vehicles of new plant or refit plant

(4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into the territory of which vehicles in that category are to be imported a choice to calculate the regional value content of such vehicles by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over

(i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins on or after the beginning of the period,

(ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or

(iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required on document filed when choosing to average; timely filing;

(5) A choice made under subsection (4) shall

(a) state the category chosen by the producer and

(i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (8);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

No rescission or modification permitted

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Categories of motor vehicles for averaging

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

Period for averaging RVC of motor vehicles of new or refit plant

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value-content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

PART VI
GENERAL PROVISIONS
SECTION 14. ACCUMULATION

Option to determine origin of good by accumulating the production of a material with production of the good in which the material is used

(1) Subject to subsections (2) and (4), for purposes of determining whether a good is an originating good, an exporter or producer of a good may choose to accumulate the production, by one or more producers in the territory of one or more of the NAFTA countries, of materials that are incorporated into that good so that the production of the materials shall be considered to have been performed by that exporter or producer.

Statement required; information as to net cost and value of non-originating materials from production of material if accumulating for regional value content requirement

(2) Where a good is subject to a regional value-content requirement and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that

(a) states the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the net cost incurred by the producer of the material plus, where not included in the net cost incurred by the producer of the material, the costs referred to in sections 7(1)(c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of non-originating materials used by the producer of the material; or

(b) states any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Averaging of costs from accumulated production

(3) Where a good is subject to a regional value-content requirement and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, where not included in the net costs incurred by the producer of the material, the costs referred to in sections 7(1) (c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Accumulated production considered to be production of a single producer

(4) For purposes of section 7(4), where a producer of the good chooses to accumulate the production of materials under subsection (1), that production shall be considered to be the production of the producer of the good.

(5) For purposes of this section,

(a) in order to accumulate the production of a material,

(i) where the good is subject to a regional value-content requirement, the producer of the good must have a statement described in subsection (2) or (3) that is signed by the producer of the material, and

(ii) where an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the NAFTA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) or (3) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

Examples of accumulation of production

(6) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 14(1)

Producer A, located in NAFTA country A, imports unfinished bearing rings provided for in subheading 8482.99 into NAFTA country A from a non-NAFTA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods. The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the finished bearing rings, per unit	$1.45
Excluded costs: (included in period costs)	0.05
Net cost of the finished bearing rings, per unit	$1.40

Producer A sells the finished bearing rings to Producer B who is located in NAFTA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to NAFTA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value-content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in section 14(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs: (($0.15 + $0.15), including $0.10 in excluded costs)	0.30
Other costs: ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit	$2.85
Excluded costs: (included in period costs)	0.10
Net cost of the bearings, per unit	$2.75

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − $0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 − $0.65)	0.85
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 − $0.35)	1.15
Other product costs ($0.75 + $0.35)	1.10
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$

$$= 59.7\%$$

Therefore, the bearings are originating goods.

Example 2: section 14(1)

Producer A, located in NAFTA country A, imports non-originating cotton, carded or combed, provided for in heading 5203 for use in the production of cotton yarn provided for in heading 5205. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 5205, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in NAFTA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 5208. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 5208, which is a change from any heading outside headings 5208 through 5212, except from certain headings, under which various yarns, including cotton yarn provided for in heading 5205, are classified. Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, under section 14(1), if Producer B chooses to accumulate the production of Producer A, the production of Producer A would be considered to have been performed by Producer B. The rule for heading 5208, under which the cotton fabric is classified, does not exclude a change from heading 5203, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 5203 to the woven fabric of cotton provided for in heading 5208 would satisfy the applicable change of tariff classification for heading 5208. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in section 14(4)(a)(ii).

SECTION 15. INABILITY TO PROVIDE SUFFICIENT INFORMATION

Supplier of material unable to provide information; beyond control of supplier; procedure to be followed by Customs

(1) Where, during a verification of origin of a good, the person from whom a producer of the good acquired a material used in the production of that good is unable to provide the customs administration that is conducting the verification with sufficient information to substantiate that the material is an originating material or that the value of the material declared for purpose of calculating the regional value content of the good is accurate, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin or value of the material, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that material that concluded that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(b) whether an independent auditor has confirmed the accuracy of

(i) any signed statement referred to in this Appendix with respect to the material,

(ii) the information that was used by the person from whom the producer acquired the material to substantiate whether the material is an originating material, or

(iii) the information submitted by the producer of the material with an application for an advance ruling where, on the basis of that information, the customs administration concluded that the material is an originating material or that the value declared for the purpose of calculating the regional value content of the good is accurate;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical materials or similar materials produced by the producer of the material and determined that

(i) the identical materials or similar materials are originating materials, or

(ii) any signed statement referred to in this Appendix with respect to those identical materials or similar materials is accurate;

(d) whether the producer of the good has exercised due diligence to ensure that any signed statement that is referred to in this Appendix with respect to the material and that was provided by the person from whom the producer acquired the material is accurate;

(e) where the customs administration has access only to partial records of the person from whom the producer acquired the material, whether the records provide sufficient evidence to substantiate that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin or value of the material from the customs administration of the NAFTA country in the territory of which the person from whom the producer acquired the material was located; and

(g) whether the producer of the good, the person from whom the producer acquired the material or a representative of that person or producer agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the material.

"Reasons beyond control" of supplier

(2) For purposes of subsection (1), ''reasons beyond the control'' of the person from whom the producer of the good acquired the material includes

(a) the bankruptcy of the person from whom the producer acquired the material or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the material is an originating material or the value of the material declared for the purpose of calculating the regional value content of the good;

(b) any other reason that results in partial or complete loss of records of that producer that the producer could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

Exporter or producer of good unable to provide information; reasons beyond control of exporter or producer; procedure to be followed by Customs

(3) Where, during a verification of origin of a good, the exporter or producer of the good is unable to provide the customs administration conducting the verification with sufficient information to substantiate that the good is an originating good, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin of the good, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that good that concluded that the good is an originating good;

(b) whether an independent auditor has confirmed the accuracy of an origin statement with respect to the good;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical goods or similar goods produced by the producer of the good and determined that the identical goods or similar goods are originating goods;

(d) whether the exporter or producer of the good has exercised due diligence to ensure that the information provided to substantiate that the good is an originating good is sufficient; and

(e) where the customs administration has access only to partial records of the exporter or producer of the good, whether the records provide sufficient evidence to substantiate that the good is an originating good;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin of the good from the customs administration of the NAFTA country in the territory of which the exporter or producer of the good was located; and

(g) whether the exporter or producer of the good or a representative of that person agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the good.

''Reasons beyond control''

(4) For purposes of subsection (3), ''reasons beyond the control'' of the exporter or producer of the good includes

(a) the bankruptcy of the exporter or producer or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the good is an originating good;

(b) any other reason that results in partial or complete loss of records of that exporter or producer that that person could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

SECTION 16. TRANSSHIPMENT

Effect of subsequent processing outside the territory of a NAFTA country; loss of originating good status

(1) A good is not an originating good by reason of having undergone production that occurs entirely in the territory of one or more of the NAFTA countries that would enable the good to qualify as an originating good if subsequent to that production

(a) the good is withdrawn from customs control outside the territories of the NAFTA countries; or

(b) the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading or any other operation necessary to preserve the good in good condition, such as inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulphur dioxide or other aqueous solutions, replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a NAFTA country.

Transshipped good considered entirely non-originating

(2) A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for purposes of this Appendix.

Exceptions for certain goods

(3) Subsection (1) does not apply with respect to a good provided for in any of subheadings 8541.10 through 8541.60 and 8542.11 through 8542.80 where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90.

SECTION 17. NON-QUALIFYING OPERATIONS

Mere dilution; production or pricing practice to circumvent the provisions of this Appendix

17. A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Appendix.

SCHEDULE I

Schedule I shall be the text of Annex 401 to the Agreement as implemented in General Note 12 of the HTSUS.

SCHEDULE II
VALUE OF GOODS

SECTION 1. Definitions.

For purposes of this Schedule, unless otherwise stated:

''buyer'' refers to a person who purchases a good from the producer;

''buying commissions'' means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

''producer'' refers to the producer of the good being valued.

SECTION 2.

For purposes of Article 402(2) of the Agreement, as implemented by section 6(2) of this Appendix, the transaction value of a good shall be the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

SECTION 3.

(1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money; it may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities shall not be added to the price actually paid or payable.

(3) The transaction value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good has been sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

SECTION 4.

(1) In determining the transaction value of a good, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers in which the good is packaged for retail sale are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the NAFTA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsections (1)(a) (i) and (ii) shall be

(a) those amounts that are recorded on the books of the buyer, or

(b) where those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subsection (1)(a)(iii) and the value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are imported from outside the territory of the NAFTA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) where the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) where the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) where the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the NAFTA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (7),

and shall include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer, to the extent that such costs are not included under paragraphs (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(f) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(h) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(7) For purposes of subsection (6)(d), the total cost of the packaging materials and containers referred to in subsection (1)(a)(iii) or the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII; and

(b) where the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the buyer, or

(b) where such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements shall be the cost of the lease as recorded on the books of the buyer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the good the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only where that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the buyer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the buyer or the producer.

SCHEDULE III
UNACCEPTABLE TRANSACTION VALUE

SECTION 1. Definitions.

For purposes of this Schedule, unless otherwise stated

''buyer'' refers to a person who purchases a good from the producer;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good being valued is imported;

''producer'' refers to the producer of the good being valued.

SECTION 2.

(1) There is no transaction value for a good where the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable where

(a) there are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 4(1)(d) of Schedule II; or

(d) except as provided in section 3, the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The conditions or considerations referred to in subsection (2)(b) include the following circumstances:

(a) the producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that has been provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of subsection (2)(b), conditions or considerations relating to the production or marketing of the good shall not render the transaction value unacceptable, such as where the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 4(1) of Schedule II, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(2)(d), the fact that the producer and the buyer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the producer and the buyer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the producer and the buyer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the producer and the buyer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the producer and the buyer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the producer and the buyer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the producer and the buyer, or it may already have detailed information concerning the relationship between the producer and the buyer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the producer and the buyer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the producer and the buyer organize their commercial relations and the way in which the price actually paid or payable for the good being valued was arrived at, in order to determine whether the relationship between the producer and the buyer influenced that price actually paid or payable. Where it can be shown that the producer and the buyer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the good had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the producer settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the buyer and the producer. As another illustration, where it is shown that the price actually paid or payable for the good is adequate to ensure recovery of the total cost of producing the good plus a profit that is representative of the producer's overall profit realized over a representative period of time, such as on an annual basis, in sales of goods of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the buyer.

(4) In a sale between a producer and a buyer who are related persons, the transaction value shall be accepted and determined in accordance with section 2 of Schedule II wherever the producer demonstrates that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).

(5) The value to be used as a test value shall be the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.

(6) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 4(1)(b) of Schedule II and the costs incurred by the producer in sales to unrelated buyers that are not incurred by the producer in sales to a related person.

(7) The application of the test value referred to in subsection (4) shall be used at the initiative of the producer and shall be used only for comparison purposes to determine whether the transaction value of the good is acceptable. The test value shall not be used as the transaction value of that good.

(8) Subsection (4) provides an opportunity for the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration, and is therefore acceptable under subsections (1) and (4). Where the application of a test value under subsection (4) demonstrates that the transaction value of the good being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the producer and the buyer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates a test value referred to in subsection (4), the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(9) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical goods or similar goods closely approximates the transaction value of the good being valued. These factors include the nature of the good, the nature of the industry itself, the season in which the good is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of good could be unacceptable, while a large difference in a case involving another type of good might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SCHEDULE IV
LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX

4009
4010.10
4011
4016.93.10
4016.99.30 and 4016.99.55
7007.11 and 7007.21
7009.10
8301.20
8407.31
8407.32

8407.33
8407.34.05, 8407.34.15 and 8407.34.25
8407.34.35, 8407.34.45 and 8407.34.55
8408.20
8409
8413.30
8414.59.30
8414.80.05
8415.81 through 8415.83
8421.39.40
8481.20, 8481.30 and 8481.80
8482.10 through 8482.80
8483.10 through 8483.40
8483.50
8501.10
8501.20
8501.31
8501.32.45
8507.20.40, 8507.30.40, 8507.40.40 and 8507.80.40
8511.30
8511.40
8511.50
8512.20
8512.40
8519.91
8527.21
8527.29
8536.50
8536.90
8537.10.30
8539.10
8539.21
8544.30
8706
8707
8708.10.30
8708.21
8708.29.20
8708.29.10
8708.29.15
8708.39
8708.40
8708.50
8708.60
8708.70.05, 8708.70.25 and 8708.70.45
8708.80
8708.91
8708.92
8708.93.15 and 8708.93.60
8708.94
8708.99.03, 8708.99.27 and 8708.99.55
8708.99.06, 8708.99.31 and 8708.99.58
8708.99.09, 8708.99.34 and 8708.99.61
8708.99.12, 8708.99.37 and 8708.99.64
8708.99.15, 8708.99.40 and 8708.99.67
8708.99.18, 8708.99.43 and 8708.99.70
8708.99.21, 8708.99.46 and 8708.99.73
8708.99.24, 8708.99.49 and 8708.99.80
9031.80
9032.89
9401.20

SCHEDULE V

LIST OF AUTOMOTIVE COMPONENTS AND MATERIALS FOR THE PURPOSES OF SECTION 10 OF THE APPENDIX

Item	Column I automotive components	Column II listed materials
1.	Engines provided for in heading 8407 or 8408	Cast blocks, cast heads, fuel nozzles, fuel injector pumps, glow plugs, turbochargers, superchargers, electronic engine controls, intake manifolds, exhaust manifolds, intake valves, exhaust valves, crankshafts, camshafts, alternators, starters, air cleaner assemblies, pistons, connecting rods and assemblies made therefrom, rotor assemblies for rotary engines, flywheels (for manual transmissions), flexplates (for automatic transmissions), oil pans, oil pumps, pressure regulators, water pumps, crankshaft gears, camshaft gears, radiator assemblies, charge-air coolers.
2.	Gear boxes (transmissions) provided for in subheading 8708.40.	(a) For manual transmissions: transmission cases and clutch housings; clutches; internal shifting mechanisms; gear sets, synchronizers and shafts; and (b) For torque convertor type transmissions: transmission cases and convertor housings; torque convertor assemblies; gear sets and clutches; electronic transmission controls.

SCHEDULE VI
REGIONAL VALUE-CONTENT CALCULATION FOR CAMI

SECTION 1. Definitions.

In this Schedule,

''closed'' means, with respect to a plant, a closure

(a) for purposes of re-tooling for a change in model line, or

(b) as a result of any event or circumstance (other than the imposition of antidumping duties or countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI Automotive, Inc. or General Motors of Canada Limited) that CAMI Automotive, Inc. or General Motors of Canada Limited could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or a delay in obtaining raw materials, parts, fuel or utilities;

''GM'' means General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A. de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof;

''producer'' means CAMI Automotive, Inc.

SECTION 2.

For purposes of section 11 of this Appendix, for purposes of determining the regional value content, in a fiscal year, of a motor vehicle of a class of motor vehicles or a model line produced by the producer in the territory of Canada and imported into the territory of the United States, the producer may choose to calculate the regional value content by

(a) calculating

(i) the sum of

(A) the net cost incurred by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 3 that is chosen by the producer, and

(B) the net cost incurred by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(ii) the sum of

(A) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 2.1 that is chosen by the producer, and

(B) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(b) using the sums referred to in paragraphs (a)(i) and (ii) as the net cost and the value of non-originating materials, respectively, in the calculation referred to in section 6(3) of this Appendix,

provided that

(c) at the beginning of the producer's fiscal year, General Motors of Canada Limited owns 50 percent or more of the voting common stock of the producer, and

(d) GM acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line, as the case may be, that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 3.

The categories referred to in clauses 2(a)(i)(A) and (ii)(A) are the following:

(a) the class of motor vehicles that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries; and

(b) the model line that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 4.

Where GM does not satisfy the requirement set out in section 2(d), the producer may choose that the regional value content be calculated in accordance with section 2 only for those motor vehicles that are acquired by GM for distribution under the GEO marque or another GM marque.

SECTION 5.

(1) The producer may choose that the calculation referred to in section 2 be made over a period of two fiscal years where

(a) any plant operated by the producer or by General Motors of Canada Limited is closed for more than two consecutive months; and

(b) the motor vehicles of a category referred to in section 3, with respect to which the producer chooses that the regional value content be calculated in accordance with section 2, are produced in that plant.

(2) Subject to subsection (3), the period of two fiscal years referred to in subsection (1) corresponds to the fiscal year in which the plant is closed and, at the choice of the producer, the preceding or the subsequent fiscal year.

(3) Where the plant is closed for a period that spans two fiscal years, the calculation referred to in section 2 may be made only over those two fiscal years.

(4) Where the producer has chosen that the regional value content be calculated over two fiscal years under this section, the choice referred to in section 11(6) of this Appendix shall be filed not later than 10 days after the end of the period during which the plant is closed, or at such later time as the customs administration may accept.

SECTION 6.

For purposes of this Schedule, a motor vehicle producer shall be deemed to be GM where, as a result of an amalgamation, reorganization, division or similar transaction, that motor vehicle producer

(a) acquires all or substantially all of the assets used by GM, and

(b) directly or indirectly controls, or is controlled by, GM, or both that motor vehicle producer and GM are controlled by the same person.

SCHEDULE VII
REASONABLE ALLOCATION OF COSTS

SECTION 1. Definitions.

For purposes of this Schedule,

''costs'' means any costs that are included in total cost and that need to be allocated pursuant to sections 5(9), 6(11) and 7(6) and sections 10(1)(a)(i) and (ii) of these Regulations, section 4(7) of Schedule II and sections 5(7) and 10(2) of Schedule VIII;

''discontinued operations'', in the case of a producer located in a NAFTA country, has the meaning set out in that NAFTA country's Generally Accepted Accounting Principles;

''indirect overhead'' means period costs and other costs;

''internal management purpose'' means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

''overhead'' means costs, other than direct material costs and direct labor costs.

SECTION 2. Interpretation.

(1) In this Schedule, reference to ''producer'' shall, for purposes of section 4(7) of Schedule II, be read as a reference to ''buyer''.
(2) In this Schedule, reference to ''good'' shall,
(a) for purposes of section 6(14) of this Appendix, be read as a reference to ''identical goods or similar goods, or any combination thereof'';
(b) for purposes of section 7(6) of this Appendix, be read as a reference to ''intermediate material'';
(c) for purposes of section 11 of this Appendix, be read as a reference to ''category of vehicles that is chosen pursuant to section 11(1) of this Appendix'';
(d) for purposes of section 12 of this Appendix, be read as a reference to ''category of goods chosen pursuant to section 12(1) of this Appendix'';
(e) for purposes of section 13(4) of this Appendix, be read as a reference to ''category of vehicles chosen pursuant to section 13(4) of this Appendix'';
(f) for purposes of section 4(7) of Schedule II, be read as a reference to ''packaging materials and containers or the elements''; and
(g) for purposes of section 5(7) of Schedule VIII, be read as a reference to ''elements''.

Methods to Reasonably Allocate Costs

SECTION 3.
(1) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.
(2) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.
(3) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

SECTION 4.
Where costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated,
(a) with respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;
(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and
(c) with respect to overhead, on the basis of any of the following methods:
(i) the method set out in Addendum A, Addendum B or Addendum C,
(ii) a method based on a combination of the methods set out in Addenda A and B or Addenda A and C, and
(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

SECTION 5.
Any cost allocation method referred to in section 3 or 4 that is used by a producer for the purposes of this Appendix shall be used throughout the producer's fiscal year.

Costs Not Reasonably Allocated

SECTION 6.
The allocation to a good of any of the following is considered not to be reasonably allocated to the good:
(a) costs of a service provided by a producer of a good to another person where the service is not related to the good;
(b) gains or losses resulting from the disposition of a discontinued operation;
(c) cumulative effects of accounting changes reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles; and''.
(d) gains or losses resulting from the sale of a capital asset of the producer.

SECTION 7.
Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

ADDENDUM A
COST RATIO METHOD

Calculation of Cost Ratio

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer in accordance with the following formula:

$$CR = \frac{AB}{TAB}$$

where
CR is the cost ratio with respect to the good;

AB is the allocation base for the good; and
TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs Included in Overhead

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where
CAG is the costs allocated to the good;
CA is the costs to be allocated; and
CR is the cost ratio with respect to the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

Allocation Bases for Costs

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:
Direct Labor Hours
Direct Labor Costs
Units Produced
Machine-hours
Sales Dollars or Pesos
Floor Space

''Examples''

The following examples illustrate the application of the cost ratio method to costs included in overhead.

Example 1: Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375
Allocation of overhead to Good A and Good B:
Good A: $6,000,000 × .625 = $3,750,000
Good B: $6,000,000 × .375 = $2,250,000

Example 2: Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .833 = $4,998,000
Good B: $6,000,000 × .167 = $1,002,000

Example 3: Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 x .667 = $4,002,000
Good B: $6,000,000 x .333 = $1,998,000

Example 4: Machine-hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60
Allocation of Machine-Related Overhead to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Example 5: Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total Sales Dollars for Good A and Good B:
Good A: $4,000 × 2,000 = $8,000,000
Good B: $3,000 × 200 = $600,000
Total Sales Dollars: $8,000,000 + $600,000 = $8,600,000
Calculation of the Ratios:

Good A: $8,000,000/$8,600,000 = .93
Good B: $600,000/$8,600,000 = .07
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .93 = $5,580,000
Good B: $6,000,000 × .07 = $420,000

Example 6: Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60
Allocation of Overhead (Utilities) to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

ADDENDUM B
DIRECT LABOR AND DIRECT MATERIAL RATIO METHOD

Calculation of Direct Labor and Direct Material Ratio

For each good produced by the producer, a direct labor and direct material ratio is calculated in accordance with the following formula:

$$DLDMR = \frac{DLC + DMC}{TDLC + TDMC}$$

where
DLDMR is the direct labor and direct material ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
TDLC is the total direct labor costs of all goods produced by the producer; and
TDMC is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good

Overhead is allocated to a good in accordance with the following formula:

$$OAG = O \times DLDMR$$

where
OAG is the overhead allocated to the good;
O is the overhead to be allocated; and
DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

"Examples"

Example 1:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Totals	$15	$10	$25

Overhead Allocated to Good A
OAG (Good A) = O ($30) × DLDMR ($15/$25)
OAG (Good A) = $18.00
Overhead Allocated to Good B
OAG (Good B) = O ($30) × DLDMR ($10/$25)
OAG (Good B) = $12.00

Example 2:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table of Example 1.

Overhead Allocated to Good A

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] − [EC ($20) × DLDMR ($15/$25)]
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = [O ($50) × DLDMR ($10/$25)] − [EC ($20) × DLDMR ($10/$25)]
OAG (Good B) = $12.00

ADDENDUM C
DIRECT COST RATIO METHOD

Direct Overhead

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio

For each good produced by the producer, a direct cost ratio is calculated in accordance with the following formula:

$$DCR = \frac{DLC + DMC + DO}{TDLC + TDMC + TDO}$$

where
DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer;

Allocation of Indirect Overhead to a Good

Indirect overhead is allocated to a good in accordance with the following formula:

$$IOAG = IO \times DCR$$

where
IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in
(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and
(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

"Examples"

Example 1:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Direct overhead (DO)	8	2	10
Totals	$23	$12	$35

Indirect Overhead Allocated to Good A

IOAG (Good A) = IO ($30) × DCR ($23/$35)
IOAG (Good A) = $19.71

Indirect Overhead Allocated to Good B

IOAG (Good B) = IO ($30) × DCR ($12/$35)
IOAG (Good B) = $10.29

Example 2:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer has chosen to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A

IOAG (Good A) = [IO ($50) × DCR ($23/$35)] − [EC ($20) × DCR ($23/$35)]

IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] − [EC ($20) × DCR ($12/$35)]

IOAG (Good B) = $10.28

SCHEDULE VIII
VALUE OF MATERIALS

SECTION 1. Definitions.

(1) For purposes of this Schedule, unless otherwise stated,

''buying commissions'' means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported;

''materials of the same class or kind'' means, with respect to materials being valued, materials that are within a group or range of materials that

(a) is produced by a particular industry or industry sector, and

(b) includes identical materials or similar materials;

''producer'' refers to

(a) in the case of section 10(1)(b)(i) of these Regulations, the producer of the listed material, and

(b) in any other case, the producer who used the material in the production of a good that is subject to a regional value-content requirement;

''seller'' refers to a person who sells the material being valued to the producer.

Interpretation

(2) Where it is to be determined under section 9(3) of these Regulations whether the customs value of a material was determined in a manner consistent with this Schedule for purposes of section 9(2) (c) or (d) of these Regulations, a reference in this Schedule to ''producer'' shall be read as a reference to ''person other than the producer who imports the traced material from outside the territories of the NAFTA countries.

SECTION 2.

(1) Except as provided under subsections (2) and (3), the transaction value of a material under Article 402(9)(a) of the Agreement, as implemented by section 7(1)(b) and sections 9(5) and 10(2) of this Appendix, shall be the price actually paid or payable for the material determined in accordance with section 4 and adjusted in accordance with section 5.

(2) There is no transaction value for a material where the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable where

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 5(1)(d); and

(d) except as provided in section 3, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The conditions or considerations referred to in subsection (3)(b) include the following circumstances:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that has been provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of subsection (3)(b), conditions or considerations relating to the use of the material shall not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 5(1), the transaction value cannot be determined under the provisions of section 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(3)(d), the fact that the seller and the producer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the seller and the producer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the seller and the producer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the seller and the producer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the seller and the producer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the seller and the producer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the seller and the producer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the seller and the producer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the seller and the producer, or it may already have detailed information concerning the relationship between the seller and the producer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the seller and the producer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the seller and the producer organize their commercial relations and the way in which the price actually paid or payable by that producer for the material being valued was arrived at, in order to determine whether the relationship between the seller and the producer influenced that price actually paid or payable. Where it can be shown that the seller and the producer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the material had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the seller. For another illustration of this, where it is shown that the price actually paid or payable for the material is adequate to ensure recovery of the total cost of producing the material plus a profit that is representative of the seller's overall profit realized over a representative period of time, such as on an annual basis, in sales of materials of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the seller and the producer.

(4) In a sale between a seller and a producer who are related persons, the transaction value shall be accepted and determined in accordance with section 2(1), wherever the seller or the producer demonstrates that the transaction value of the material in that sale closely approximates one of the following test values that occurs at or about the same time as the sale and is chosen by the seller or the producer:

(a) the transaction value in sales to unrelated buyers of identical materials or similar materials, as determined in accordance with section 2(1);

(b) the value of identical materials or similar materials, as determined in accordance with section 9; or

(c) the value of identical materials or similar materials, as determined in accordance with section 10.

(5) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 5(1)(b) and the costs incurred by the seller in sales to unrelated buyers that are not incurred by the seller in sales by the seller to a related person.

(6) The application of a test value referred to in subsection (4) shall be used at the initiative of the seller, or at the initiative of the producer with the consent of the seller, and shall be used only for comparison purposes to determine whether the transaction value of the material is acceptable. The test value shall not be used as the transaction value of that material.

(7) Subsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1). Where the application of a test value under subsection (4) demonstrates that the transaction value of the material being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the seller and the producer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates one of the test values determined under subsection (4), the seller or the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(8) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical materials or similar materials closely approximates the transaction value of the material being valued. These factors include the nature of the material, the nature of the industry itself, the season in which the material is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of material could be unacceptable, while a large difference in a case involving another type of material might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SECTION 4.

(1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money: it may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 5, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value shall not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

SECTION 5.

(1) In determining the transaction value of the material, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, molds and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches performed outside the territory of the NAFTA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the NAFTA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2(1).

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsection (1)(a) shall be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are imported from outside the territory of the NAFTA country in which the seller is located, the customs value of the elements,

(b) where the producer, or a related person on behalf of the producer, purchases the elements from an unrelated person in the territory of the NAFTA country in which the seller is located, the price actually paid or payable for the elements,

(c) where the producer, or a related person on behalf of the producer, acquires the elements from an unrelated person in the territory of the NAFTA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or

(d) where the elements are produced by the producer, or by a related person, in the territory of the NAFTA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (7),

and shall include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraph (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(f) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(h) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.

(7) For the purposes of subsection (6)(d), the total cost of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII; and

(b) where the elements are produced by a person who is related to the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the producer; or

(b) where such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements shall be the cost of the lease that is recorded on the books of the producer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the material the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the material in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the producer or the seller.

SECTION 6.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 7.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 8.

If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6 or 7, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be determined under section 9 or, when the value cannot be determined under that section, under section 10 except that, at the request of the producer, the order of application of sections 9 and 10 shall be reversed.

SECTION 9.

(1) Under this section, if identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that NAFTA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that NAFTA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value shall, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the date the material being valued was received by the producer.

(3) The expression ''unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity'' in subsection (1) means the price at which the greatest number of units is sold in sales between unrelated persons. For an illustration of this, materials are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11–25 units	95	5 sales of 11 units	55
		1 sale of 20 units	
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in section 5(1)(b), shall not be taken into account in establishing the unit price for the purposes of this section.
(5) The amount generally reflected for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole. The figure for the purposes of deducting an amount for profit and general expenses shall be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. Where the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses shall be based on relevant information other than that supplied by or on behalf of the producer.
(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.
(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, ''materials of the same class or kind'' includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the NAFTA country in which the producer is located.
(8) For the purposes of subsection (2), the earliest date shall be the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the NAFTA country in which the producer is located.

SECTION 10.

(1) Under this section, the value of a material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the sum of

(a) the cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales

(i) where the material being valued is imported by the producer into the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and

(ii) where the material being valued is acquired by the producer from another person located in the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located,

(d) the value of elements referred to in section 5(1)(b)(i), determined in accordance with section 5(6), and

(e) the value of elements referred to in sections 5(1)(b)(ii) through (iv), determined in accordance with section 5(8) and reasonably allocated to the material in accordance with section 5(12).

(2) For purposes of subsections (1)(a) and (b), where the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in subsections (1)(a) and (b) with respect to the material being valued shall be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule VII.
(3) The amount for profit and general expenses referred to in subsection (1)(c) shall be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied shall be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. Where the material is produced in the territory of a NAFTA country, the information shall be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that NAFTA country in Schedule XII.
(4) For purposes of subsection (1)(c) and subsection (3), general expenses means the direct and indirect costs of producing and selling the material that are not included under subsections (1)(a) and (b).
(5) For purposes of subsection (3), the amount for profit and general expenses shall be taken as a whole. Where, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. Where the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures shall be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is where a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(6) Where the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.
(7) Where a customs administration uses information other than that supplied by or on behalf of the producer of the material for the purposes of determining the value of a material under this section, the customs administration shall communicate to the producer, if that producer so requests, the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality under Article 507 of the Agreement, as implemented in each NAFTA country.
(8) Whether certain materials are of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

SECTION 11.

(1) Where there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the materials cannot be determined under sections 6 through 10, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.
(2) The value of the material determined under this section shall not be determined on the basis of
(a) a valuation system which provides for the acceptance of the higher of two alternative values;
(b) a cost of production other than the value determined in accordance with section 10;
(c) minimum values;
(d) arbitrary or fictitious values;
(e) where the material is produced in the territory of the NAFTA country in which the producer is located, the price of the material for export from that territory; or
(f) where the material is imported, the price of the material for export to a country other than to the territory of the NAFTA country in which the producer is located.
(3) To the greatest extent possible, the value of the material determined under this section shall be based on the methods of valuation set out in sections 2 through 10, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 6, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 9 could be used. For another illustration, under section 7, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 9 could be used. For a further illustration, under section 9, the ninety days requirement could be administered flexibly.

SCHEDULE IX
METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Schedule,
''FIFO method'' means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;
''identical materials'' means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;
''LIFO method'' means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;
''materials inventory'' means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good; and
''rolling average method'' means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

General

SECTION 2.

For purposes of sections 5(11) and (12) and 6(10) of this Appendix, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:
(a) FIFO method;
(b) LIFO method; and

(c) rolling average method.

SECTION 3.

(1) Where a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) Where a producer of a good produces the good in more than one plant, the method chosen by the producer shall be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

Average Value for Rolling Average Method

SECTION 4.

(1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing

(a) the total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 7 of this Appendix,

by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

ADDENDUM

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;

(b) one unit of Materials A is used to produce one unit of Good A;

(c) all other materials used in the production of Good A are originating materials; and

(d) Good A is produced in a single plant.

Date (M/D/Y)	Materials inventory (Receipts of materials A)		Sales (Shipments of good A)
	Quantity (units)	Unit cost*	Quantity (units)
01/01/94	200	$1.05	.....
01/03/94	1,000	1.00	.....
01/05/94	1,000	1.10	.....
01/08/94	.....	.....	500
01/09/94	.....	.....	500
01/10/94	1,000	1.05	.....
01/14/94	.....	.....	1,500
01/16/94	2,000	1.10	.....
01/18/94	.....	.....	1,500

*Unit cost is determined in accordance with section 7 of this Appendix.

Example 1: FIFO method

By applying the FIFO method:

(1) the 200 units of Materials A received on 01/01/94 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 unit × $1.05) + ($300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 of Materials A received on 01/03/94 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit, and 300 units of the 1,000 Materials A received on 01/10/94 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units × $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 × $1.05) + (800 × $1.10)].

Example 2: LIFO method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);
(3) the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and
(4) 1,500 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).
Example 3: Rolling average method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

Materials inventory				
	Date (M/D/Y)	Quantity (units)	Unit cost*	Total value
Beginning Inventory	1/1/94	200	$1.05	$210
Receipt	1/3/94	1,000	1.00	1,000
AVERAGE VALUE	.....	1,200	1.008	1,210
Receipt	1/5/94	1,000	1.10	1,100
AVERAGE VALUE	.....	2,200	1.05	2,310
Shipment	1/8/94	500	1.05	525
AVERAGE VALUE	.....	1,700	1.05	1,785
Shipment	1/9/94	500	1.05	525
AVERAGE VALUE	.....	1,200	1.05	1,260
Receipt	1/16/94	2,000	1.10	2,200
AVERAGE VALUE	.....	3,200	1.08	3,460

* Unit cost is determined in accordance with section 7 of this Appendix.

By applying the rolling average method:
(1) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/94 is considered to be $525 (500 units × $1.05); and
(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/94 is considered to be $525 (500 units × $1.05).

SCHEDULE X
INVENTORY MANAGEMENT METHODS

PART I
FUNGIBLE MATERIALS

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Part,
''average method'' means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;
''FIFO method'' means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
''LIFO method'' means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
''materials inventory'' means,

(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and

(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;

''opening inventory'' means the materials inventory at the time an inventory management method is chosen;
''origin identifier'' means any mark that identifies fungible materials as originating materials or non-originating materials.

General

SECTION 2.

The inventory management methods for determining whether fungible materials referred to in section 7(16)(a) of this Appendix are originating materials are the following:

(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

SECTION 3.

Where a producer of a good or a person from whom the producer acquired the materials that are used in the production of the good chooses an inventory management method referred to in section 2, that method, including the averaging period chosen in the case of the average method, shall be used from the time the choice is made until the end of the fiscal year of the producer or person.

Specific Identification Method

SECTION 4.

(1) Except as otherwise provided under subsection (2), where the producer or person referred to in section 3 chooses the specific identification method, the producer or person shall physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.

(2) Where originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

Average Method

SECTION 5.

Where the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

SECTION 6.

(1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

SECTION 7.

(1) Where the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under sections 6(15), 11(1), (3) or (6), 12(1) or 13(4) of this Appendix, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

SECTION 8.

(1) Where the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment,

by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

Manner of Dealing With Opening Inventory

SECTION 9.

(1) Except as otherwise provided under subsections (2) and (3), where the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) determining the origin of the fungible materials that make up those receipts; and
(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.
(2) Where the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.
(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

PART II
FUNGIBLE GOODS

Definitions and Interpretation

SECTION 10. Definitions.

For purposes of this Part,
''average method'' means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 12, of originating goods and non-originating goods in finished goods inventory;
''FIFO method'' means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;
''finished goods inventory'' means an inventory from which fungible goods are sold or otherwise transferred to another person;
''LIFO method'' means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;
''opening inventory'' means the finished goods inventory at the time an inventory management method is chosen; and
''origin identifier'' means any mark that identifies fungible goods as originating goods or non-originating goods.

General

SECTION 11.

The inventory management methods for determining whether fungible goods referred to in section 7(16)(b) of this Appendix are originating goods are the following:
(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

SECTION 12.

Where an exporter of a good or a person from whom the exporter acquired the good chooses an inventory management method referred to in section 11, that method, including the averaging period chosen in the case of the average method, shall be used from the time the choice is made until the end of the fiscal year of the exporter or person.

Specific Identification Method

SECTION 13.

(1) Except as provided under subsection (2), where the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person shall physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.
(2) Where originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

Average Method

SECTION 14.

(1) Where the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing
(a) the sum of
(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and
(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period,
by
(b) the sum of
(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and
(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.
(2) The calculation with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

Manner of Dealing with Opening Inventory

SECTION 15.

(1) Except as otherwise provided under subsections (2) and (3), where the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;
(b) determining the origin of the fungible goods that make up those receipts; and
(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) Where the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

ADDENDUM A
"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE MATERIALS

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:
(a) originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;
(b) one unit of Material A is used to produce one unit of Good A;
(c) Material A is only used in the production of Good A;
(d) all other materials used in the production of Good A are originating materials; and
(e) the producer of Good A exports all shipments of Good A to the territory of a NAFTA country.

Date (M/D/Y)	Materials inventory (Receipts of material A)			Sales (Shipments of good A)
	Quantity (units)	Unit cost*	Total value	Quantity (units)
12/18/93	100 (O[1])	$1.00	$100	
12/27/93	100 (N[2])	1.10	110	
01/01/94	200 (OI[3])			
01/01/94	1,000 (O)	1.00	1,000	
01/05/94	1,000 (N)	1.10	1,100	
01/10/94	.....	.....	.....	100
01/10/94	1,000 (O)	1.05	1,050	
01/15/94	.....	.....	.....	700
01/16/94	2,000 (N)	1.10	2,200	
01/20/94	.....	.....	.....	1,000
01/23/94	.....	.....	.....	900

*Unit cost is determined in accordance with section 7 of this Appendix.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

Example 1: FIFO method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) the 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/93 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/93 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units x $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units x $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units x $1.10).

Example 2: LIFO method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, where originating Material A is used in the production of Good A, Good A is an originating good and, where non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

	Date (M/D/Y)	Materials inventory						Sales (Shipments of good A)
		(Receipts of material A)			(Non-originating material)			
		Quantity (units)	Total value	Unit cost*	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/93	100 (O[1])	$100	$1.00				
Receipt	12/27/93	*100 (N[2])*	*110*	*1.10*	*100*	*$110.00*		
NEW AVERAGE INV. VALUE.		200 (OI[3])	210	1.05	100	105.00	0.50	
Receipt	01/01/94	*1,000 (O)*	*1,000*	*1.00*				
NEW AVERAGE INV. VALUE.		1,200	1,210	1.01	100	101.00	0.08	
Receipt	01/05/94	*1,000 (N)*	*1,100*	*1.10*	*1,000*	*1,100.00*		
NEW AVERAGE INV. VALUE.		2,200	2,310	1.05	1,100	1,155.00	0.50	
Shipment	01/10/94	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/94	*1,000 (O)*	*1,050*	*1.05*				
NEW AVERAGE INV. VALUE.		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/94	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/94	*2,000 (N)*	*2,200*	*1.10*	*2,000*	*2,000.00*		
NEW AVERAGE INV. VALUE.		4,400	4,720	1.07	2,816	3,013.20	0.64	
Shipment	01/20/94	(1,000)	(1,070)	1.07	(640)	(648.80)		1,000
Shipment	01/23/94	*(900)*	*(963)*	*1.07*	*(576)*	*(616.32)*		900
NEW AVERAGE INV. VALUE.		2,500	2,687	1.07	1,596	1,707.24	0.64	

*Unit cost is determined in accordance with section 7 of this Appendix.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

By applying the average method:

(1) before the shipment of the 100 units of Material A on 01/10/94, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units); based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units); based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units); based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units; based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

Example 4: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under section 6(15)(a) of this Appendix to determine the regional value content of Good A.

By applying the average method:

the ratio of units of originating Material A to total units of Material A in materials inventory for January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units-1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 1994; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/ $5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1-.404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units-1,010 units) are considered to be non-originating materials.

ADDENDUM B
"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE GOODS

The following ''examples'' are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

Date (M/D/Y)	Finished goods inventory (receipts of good A)	Sales (shipments of good A)
	Quantity (units)	Quantity (units)
12/18/93	100 (O[1])	
12/27/93	100 (N[2])	
01/01/94	200 (OI[3])	
01/01/94	1,000 (O)	
01/05/94	1,000 (N)	
01/10/94		100
01/15/94	1,000 (O)	
01/16/94		700
01/20/94	2,000 (N)	
01/20/94		1,000
01/23/94		900

[1] ''O'' denotes originating goods.
[2] ''N'' denotes non-originating goods.
[3] ''OI'' denotes opening inventory.

Example 1: FIFO method

By applying the FIFO method:

(1) the 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/93 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/93 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 2: LIFO method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 1994. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 1994.

By applying the average method:

the ratio of originating goods to all goods in finished goods inventory for the month of January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 1994 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

SCHEDULE XI
METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Schedule,

''fixed-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

''linear interpolation'' means, with respect to the yield on federal government debt obligations, the application of the following mathematical formula:

$$A+[((B-A)\times(E-D))/(C-D)]$$

where

A is the yield on federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the yield on federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule; ''payment schedule'' means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

''variable-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

''weighted average principal maturity'' means, with respect to fixed-rate contracts and variable-rate contracts, the number of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, where that amount is the midpoint between two such numbers, to the greater of those two numbers;

''weighted principal payment'' means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

''yield on federal government debt obligations'' means

(a) in the case of a producer located in Canada, the yield for federal government debt obligations set out in the Bank of Canada's *Weekly Financial Statistics*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''Treasury Bills'', and

(ii) in any other case, under the title ''Selected Government of Canada benchmark bond yields'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the title *''Certificados de la Tesoreria de la Federacion''* for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''U.S. government securities, Treasury bills, Secondary market'', and

(ii) in any other case, under the title ''U.S. Government Securities, Treasury constant maturities'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

General

SECTION 2.

For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract shall be compared to the yield on federal government debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

ADDENDUM

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a fixed-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year on the declining principal balance;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;

(d) there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and

(e) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 percent and 5.0 percent, respectively.

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135,867.96	1,281,773.22
					$5,977,993.19

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 percent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

Weighted Average Principal Maturity

$5,977,993.19/$1,000,000=5.977993 or 6 years [5]

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the 6 percent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 percent and 5.0 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 percent. This number is calculated as follows:

$4.7+[((5.0-4.7)\times(6-5))/(7-5)]$
$=4.7+0.15$
$=4.85\%$; and

(3) the producer's contract interest rate of 6 percent is within 700 basis points of the 4.85 percent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs.''

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:
(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a variable-rate contract;
(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year for the first two years and 8 percent per year for the next two years on the principal balance, with rates adjusted each two years after that;
(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;
(d) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;
(e) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and
(f) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 percent and 3.5 percent respectively.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
						$1,924,132.04

Weighted Average Principal Maturity
$1,924,132.04/$1,000,000=1.92413204 or 1.9 years

By applying the above method:
(1) the weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;
(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$3.0+[((3.5-3.0)\times(1.9-1.0))/(2.0-1.0)]$
$=3.0+0.45$
$=3.45\%$; and

(3) the producer's contract rate of 6 percent for the first two years of the loan is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38
4	764,390.62	8.00	61,151.25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity
$1,608,102.62/$843,712.01=1.905985 or 1.9 years

By applying the above method:
(1) the weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$3.0+[((3.5-3.0)\times(1.9-1.0))/(2.0-1.0)]$
$=3.0+0.45$
$=3.45\%$

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 percent is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

SCHEDULE XII
GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

SECTION 1.

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

SECTION 2.

For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) with respect to the territory of Canada, *The Canadian Institute of Chartered Accountants Handbook*, as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados,* issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP),* including the *boletines complementarios*, as updated from time to time; and

(c) with respect to the territory of the United States,

(i) the following publications of the American Institute of Certified Public Accountants (AICPA), as updated from time to time:

(A) AICPA Professional Standards,
(B) Committee on Accounting Procedure Accounting Research Bulletins,
(C) Accounting Principles Board Opinions and Statements,
(D) APB Accounting and Auditing Guides,
(E) AICPA Statements of Position, and
(F) AICPA Issues Papers and Practice Bulletins,

(ii) the following publications of the Financial Accounting Standards Board (FASB), as updated from time to time:

(A) FASB Accounting Standards and Interpretations,
(B) FASB Technical Bulletins, and
(C) FASB Concepts Statements.

PART 191—DRAWBACK

1. 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 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

2. The last sentence of § 191.0 is republished to read as follows:

§ 191.0 Scope.

* * * Additional drawback provisions relating to the North American Free Trade Agreement are contained in subpart E of part 181 of this chapter.

Dated: August 16, 1995.

George J. Weise,

Commissioner of Customs.

Approved:

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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