DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10 and 191

[CBP Dec. 06–39]

RIN 1505–AB47

United States-Chile Free Trade Agreement

AGENCIES: Customs and Border Protection, Depart of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to title 19 of the Code of Federal Regulations (''CFR'') which were published in the **Federal Register** on March 7, 2005, as CBP Dec. 05–07 to implement the preferential tariff treatment and other customs-related provisions of the United States-Chile Free Trade Agreement signed by the United States and the Republic of Chile.

DATES: Final rule effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT:

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

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

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

Legal Aspects: Edward Leigh, Office of International Trade, (202) 572–8827.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2003, the United States and the Republic of Chile (the ''Parties'') signed the U.S.-Chile Free Trade Agreement (''US–CFTA''). The provisions of the US–CFTA were adopted by the United States with the enactment of the United States-Chile Free Trade Agreement Implementation Act (the ''Act''), Public Law 108–77, 117 Stat. 909 (19 U.S.C. 3805 note), on September 3, 2003. Section 210 of the Act requires that regulations be prescribed as necessary.

Those customs-related US–CFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin and Origin Procedures) and Chapter Five (Customs Administration).

The tariff-related provisions within US–CFTA Chapter Three which require regulatory action by CBP are Article 3.7 (Temporary Admission of Goods), Article 3.9 (Goods Re-Entered after Repair or Alteration), and Article 3.20 (Rules of Origin and Related Matters).

Chapter Four of the US–CFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Chile (US–CFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 4.1 and Annex 4.1 of the US–CFTA. Under Article 4.1 within that Chapter, originating goods may be grouped in three broad categories: (1) Goods which are wholly obtained or produced entirely in one or both of the Parties; (2) goods which are produced entirely in one or both of the Parties and which satisfy the specific rules of origin in US–CFTA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement); and (3) goods which are produced entirely in one or both of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Article 4.3 sets forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* rule. Article 4.4 sets forth the rules for determining whether accessories, spare parts, or tools delivered with a good qualify as material used in the production of such good. Article 4.6 provides for accumulation of production by two or more producers. Article 4.7 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations. The basic rules of origin in Chapter Four of the US–CFTA are set forth in General Note 26, Harmonized Tariff Schedule of the United States (HTSUS). In addition, Section B of Chapter Four sets forth the procedural requirements which apply under the US–CFTA, in particular with regard to claims for preferential tariff treatment.

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

On March 7, 2005, Customs and Border Protection (''CBP'') published CBP Dec. 05–07 in the **Federal Register** (70 FR 10868) setting forth interim amendments to implement the preferential tariff treatment and other customs-related provisions of the US–CFTA. In order to provide transparency and facilitate their use, the majority of the US–CFTA implementing regulations set forth in CBP Dec. 05–07 were included within new Subpart H in Part 10 of title 19 of the Code of Federal Regulations (19 CFR Subpart H, Part 10). However, in those cases in which US–CFTA implementation was more appropriate in the context of an existing regulatory provision, the US–CFTA regulatory text was incorporated in an existing part within the CBP regulations. CBP Dec. 05–07 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 new US–CFTA implementing regulations.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 7, 2005, CBP Dec. 05–07 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on June 6, 2005. A discussion of the comments received by CBP is set forth below.

Discussion of Comments

A total of three commenters responded to the solicitation of comments on the interim regulations set forth in CBP Dec. 05–07. The comments are discussed below.

Comment:

One commenter stated that §§ 10.412 and 10.415, which concern importer obligations and maintenance of records, respectively, should make clear that importers are required to retain records and documents related to the production of goods for which preferential tariff treatment is claimed only to the extent that they possess such records in the normal course of business. The commenter explained that, in many cases involving unrelated parties, Chilean producers may be unwilling to share their production information and costs with the U.S. importer.

CBP's Response:

CBP recognizes that, under certain circumstances, Chilean producers may be reluctant to provide production information and costs to U.S. importers due to business confidentiality concerns. In these cases, CBP has no objection to the direct submission to the port director of such information from

the exporter or producer. To clarify this point, CBP is amending § 10.412 in this final rule by adding a sentence at the end of paragraph (a) stating that CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information. Regarding § 10.415, CBP notes that paragraph (a) of that section provides, in pertinent part, that an importer claiming preferential tariff treatment must maintain for five years after the date of importation of the good ''* * * any records and documents *that the importer has* relating to the origin of the good * * *.'' [Emphasis added.] CBP submits that the current language of the regulation adequately addresses the commenters's concerns.

Comment:

One commenter noted that §§ 10.441 and 10.442, concerning procedures for the filing and processing of post-importation duty-refund claims, set forth several references to the words ''petition or request for reliquidation.'' The commenter asks whether these references are necessary in view of the fact that 19 U.S.C. 1520(c) was repealed by section 2105 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2434).

CBP's Response:

Section 1520(c), which authorized the reliquidation of an entry under certain circumstances, was repealed effective December 18, 2004 (see § 2108 of the Miscellaneous Trade and Technical Corrections Act of 2004). As a result, CBP agrees with the commenter that the references to ''petition or request for reliquidation'' in §§ 10.441(b)(4) and 10.442(b), (c)(2), and (d)(3) are no longer necessary. These references have been removed in this final rule document.

Comment:

One commenter stated that § 10.455(a)(3), concerning the value of materials, is too broad because ''it would preclude transaction value as the value of a material where the material is provided to the producer at a price reflecting any discount or reduction in price,'' including quantity discounts. [Emphasis by commenter.] The commenter suggested that the wording of this paragraph should parallel the definition of assists in § 152.102(a) of the CBP regulations; *e.g.*, ''In the case of a material provided to the producer free of charge or at reduced cost * * *.''

CBP's Response:

First, CBP assumes that, by using the term ''transaction value,'' the commenter meant to refer to ''adjusted value'' or ''the price actually paid or payable,'' as those terms are used in paragraphs (a)(1) and (a)(2) of § 10.455. Second, the language ''* * * or at a price reflecting a discount or similar reduction * * *.'' in § 10.455(a)(3) was taken verbatim from Article 4.3 of the US–CFTA and section 202(e) of the Act. CBP is bound by this statutory language and cannot make the substantive change suggested by the commenter. CBP notes that the effect of this provision is to prevent the value of originating materials from being understated for purposes of origin determination by the type of common discounts to which the commenter has referred.

Comment:

One commenter stated that § 10.483(c)(2), relating to voluntary corrections of declarations, should be revised to clarify that the affected import transactions should be identified ''to the extent possible.'' According to the commenter, in some cases, unrelated exporters will not have details (such as the date and port of importation) on the import transactions that were affected by the incorrect declaration.

CBP's Response:

Section 10.410(b) states that it is the responsibility of the U.S. importer (not the exporter) to make a corrected declaration. The importer clearly should be able to identify from its records the import transactions affected by the incorrect declaration, including the port and approximate date of each importation. For this reason, CBP declines to make the change to § 10.483(c)(2) suggested by the commenter.

Comment:

Two commenters noted that CBP Dec. 05–07 amended the scope section(§ 191.0) in Part 191 of the CBP regulations, relating to drawback, to provide a cross-reference to the US–CFTA drawback provisions contained in new Subpart H of Part 10. However, the commenters stated that they were unable to find any provisions in Subpart H which discuss the subject of drawback.

CBP's Response:

Although CBP originally intended to include regulations which address the subject of drawback in new Subpart H of Part 10, it was subsequently determined that no such regulations were necessary as the drawback provisions in Part 191 were sufficient for purposes of the US–CFTA. However, CBP neglected to delete the amendment to § 191.0 set forth in CBP Dec. 05–07, as noted by the commenter. That error has been corrected in this final rule document.

Additional Changes to the Regulations

In addition to the regulatory changes identified and discussed above in connection with the discussion of public comments received in response to CBP Dec. 05–07, the final rulemaking text set forth below incorporates the following additional changes which CBP believes are necessary based on further internal review of the interim regulatory text:

1. In § 10.401, relating to the scope of Subpart H:

a. The words ''entered into'' in the first sentence have been replaced by the word ''signed'' to avoid any potential confusion between the date that the US–CFTA was signed (June 6, 2003) and the date that it entered into force (January 1, 2004); and

b. The reference to Part 191 in the third sentence has been removed consistent with the removal of the cross-reference to Subpart H, Part 10 in § 191.0, as discussed in the comment discussion above;

2. In § 10.402, which sets forth general definitions:

a. The definition of ''claim for preferential tariff treatment'' in paragraph (c) has been revised to add the words ''and to an exemption from the merchandise processing fee'' at the end of the definition to clarify that the term encompasses a claim that a good is entitled to an exemption from the merchandise processing fee (*see* § 24.23(c)(7) of the CBP regulations);

b. The definition of ''national'' (formerly paragraph (o)) has been removed as that term is not used in Subpart H of Part 10;

c. A definition of ''identical goods'' has been added as new paragraph (n). This definition was set forth in §§ 10.411(d)(2) and 10.422(d)(2) of the interim regulatory text but has been removed from those provisions and inserted into the general definitions section for the reason that the term also appears in § 10.474, and the definition is equally applicable to all three provisions. In addition, the definition has been modified slightly by replacing the word ''production'' with the words ''particular rule of origin,'' which CBP believes more accurately describe the means by which a good is determined to qualify as originating;

d. As a result of the removal of the definition of ''national'' and the addition of a definition for ''identical goods'' discussed above, current paragraph (n), setting forth the definition of ''indirect material,'' has been re-designated as paragraph (o), and a conforming change has been made to § 10.460 to reflect the re-designation of this paragraph; and

e. The definition of ''preferential tariff treatment'' in paragraph (s) has been revised to add the words '', and an exemption from the merchandise processing fee'' at the end of the definition to clarify that the term includes an exemption from the merchandise processing fee.

3. In § 10.410, relating to the filing of a claim for preferential tariff treatment:

a. Paragraph (a) has been revised to add the words ''including an exemption from the merchandise processing fee,'' immediately following the words ''under the US–CFTA,'' in the first sentence to clarify that a claim for preferential tariff treatment for an originating good under the US–CFTA includes a claim that the good is entitled to an exemption from the merchandise processing fee;

b. Paragraph (b) has been revised to add the words ''or other information'' immediately following the word ''certification'', consistent with the wording in the corresponding provision in the US–CFTA (*see* Article 4.12.1(c)); and

c. Paragraph (b) has been further revised to provide that a corrected declaration may be effected by submission of a statement ''via an authorized electronic data interchange system,'' as an alternative to submission of a written statement, consistent with CBP's movement toward a paperless environment;

4. In § 10.411, relating to the certification of origin:

a. The heading to § 10.411 and the paragraph (a) introductory text have been revised to add the words ''or other information'' after ''certification'' and ''certification of origin'' to conform to the wording in Articles 4.12.1(b) and 4.14.1 of the US–CFTA, which reference the importer's obligation to submit a certificate of origin or other information demonstrating that the good qualifies as originating;

b. Paragraph (a)(2)(iv) has been modified to add the words ''for which preferential tariff treatment is claimed'' immediately following the word ''good'' for clarification purposes;

c. Paragraph (a)(2)(vii), relating to multiple shipments of identical goods, has been removed and incorporated (in slightly revised form) into re-designated paragraph (e)(2) (formerly paragraph (d)(2)) to clarify that this provision applies to certifications but not to ''other information'' submitted pursuant to § 10.411(a);

d. Paragraph (a)(3), which sets forth the certifying statement to be included on the certification of origin, has been removed and re-designated as new paragraph (b) and a heading has been added. This change clarifies that the statement is required on the certification but not when ''other information'' is submitted pursuant to § 10.411(a);

e. As a result of the insertion of new paragraph (b), as discussed above, paragraphs (b) through (e) of the interim regulatory text have been re-designated as paragraphs (c) through (f), respectively;

f. Re-designated paragraph (c) (formerly paragraph (b)), which concerns who may sign the certification, has been revised to require that the certification of origin include the legal name and address of the responsible official or authorized agent signing the certification, and also to ask for the telephone and e-mail address when available. This information is necessary in the event that the person signing the certification is not identified pursuant to paragraphs (a)(2)(i) through (a)(2)(iii) of § 10.411; and

g. Re-designated paragraphs (d) and (f) (formerly paragraphs (c) and (e), respectively) have been revised to add the words ''or other information'' immediately following the word ''certification,'' consistent with the changes to paragraph (a) discussed above;

5. In § 10.412, relating to importer obligations:

a. Paragraph (a) has been revised to add the words ''or other information submitted to CBP under § 10.411(a) of this subpart'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above;

b. The paragraph (b) introductory text and paragraph (b)(1) have been revised to add the word ''tariff'' between the words ''preferential'' and ''treatment'' each place they appear for clarification purposes and consistent with other references to these words throughout Subpart H. Paragraph (b)(1) has been further revised to add the words ''or other information'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above; and

c. Paragraph (d), which stated that ''* * * importers are expected to establish and implement internal controls which provide for the periodic review of the accuracy of the certifications or other records referred to in paragraph (b)(1) of this section,'' has been removed as there is no basis of authority for this provision in the US–CFTA or the Act;

6. In § 10.413, concerning the validity of the certification, the words ''of this subpart'' have been added immediately following the reference to ''§ 10.411'' each place it appears for clarification purposes;

7. In § 10.414, which sets forth the circumstances under which a certification is not required:

a. The section heading, paragraph (a) introductory text, and paragraph (b) have been revised to add the words ''or other information'' immediately following the word ''certification'' each place it appears, consistent with the change to the § 10.411(a) introductory text discussed above; and

b. The paragraph (a) introductory text has been further revised to replace the words ''for preferential tariff treatment'' with the words ''as originating under § 10.411(a),'' consistent with the wording in § 10.411(a);

8. In § 10.415, concerning maintenance of records, the paragraph (a) introductory text has been revised:

a. To add the word ''tariff'' between the words ''preferential'' and treatment'' for clarification purposes and consistent with other references to these words throughout Subpart H;

b. To add the words ''or other information'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above; and

c. To remove the words ''in the United States'' to conform to the corresponding provision in the US–CFTA (see Article 4.14.3), which includes no restriction on where the records referenced in that provision must be maintained;

9. In § 10.416, relating to the consequences of failing to comply with the requirements of Subpart H:

a. Paragraph (a) has been revised to add the words ''or other information demonstrating that the good qualifies as originating'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above; and

b. Paragraph (b) has been revised to add the words ''of this subpart'' immediately following the reference to ''§ 10.463'' for clarification purposes;

10. In § 10.420, relating to the filing of a tariff preference level (TPL) claim, the words ''of this subpart'' have been added immediately following each of the references to ''§ 10.421'', ''§ 10.451'', ''§ 10.421(a) or (b)'', and ''§ 10.421(c)'' for clarification purposes;

11. In § 10.421, concerning goods eligible for TPL claims:

a. The words ''of this subpart'' have been added immediately following the reference to ''§ 10.420'' in the introductory text for clarification purposes; and

b. The term ''HTS'' has been replaced each place it appears (including the

footnote) with the correct term ''HTSUS'' (see § 10.402(m));

12. In § 10.422, relating to the TPL certificate of eligibility:

a. The paragraph (a) introductory text has been revised to add the words ''of this subpart'' immediately following the reference to ''§ 10.421'' for clarification purposes;

b. Paragraph (a)(2), which sets forth the information to be included on the certificate of eligibility, has been modified to require (in new paragraph (a)(2)(ii)) that the certificate include the legal name and address of the responsible official or authorized agent of the importer signing the certificate (if different from the importer of record), and also to ask for the telephone and e-mail address when available. Similar to the change to § 10.411(c) discussed above, this change is necessary in the event that the person signing the certificate of eligibility is not identified pursuant to § 10.422(a)(2)(i);

c. As a result of the addition of new paragraph (a)(2)(ii), as discussed above, paragraphs (a)(2)(ii) through (a)(2)(vii) of the interim regulatory text have been re-designated as paragraphs (a)(2)(iii) through (a)(2)(viii), respectively; and

d. The reference to ''certification'' in paragraph (d)(2) has been replaced with the correct word ''certificate;''

13. In § 10.424, concerning the effect of noncompliance with applicable TPL requirements, the words ''of this subpart'' have been added immediately following the reference to ''§ 10.422'' in paragraph (a) and the reference to ''§ 10.425'' in paragraph (b) for clarification purposes;

14. In § 10.440, relating to the right to make post-importation duty refund claims, the word ''part'' has been replaced each place it appears with the correct word ''subpart'';

15. In § 10.441, relating to the procedures for filing post-importation claims:

a. Paragraphs (a) and (b)(2) have been revised to replace the word ''part'' each place it appears with the correct word ''subpart''; and

b. Paragraph (b)(2) has been further revised to add the words ''or other information demonstrating'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above;

16. In § 10.442, relating to CBP processing procedures for post-importation claims:

a. The word ''part'' in paragraphs (a) and (d)(1) has been replaced each place it appears with the correct word ''subpart'';

b. The words ''for refund'' have been added immediately following the word ''claim'' in the first and second sentences of paragraph (b) for clarification purposes; and

c. Paragraphs (d)((2) and (d)(3) have been revised to provide that notice of a denial of a claim for a refund may be made ''via an authorized electronic data interchange system,'' as an alternative to the issuance of a written notice, consistent with CBP's movement toward a paperless environment;

17. In § 10.450, which sets forth definitions regarding the rules of origin, the words ''of this subpart'' have been added immediately following the reference to ''§§ 10.450 through 10.463'' in the introductory text for clarification purposes:

18. In § 10.455, relating to the value of materials:

a. Paragraph (a)(1) has been revised to add the words ''with respect to that importation'' at the end of the paragraph to conform to the wording in the corresponding statutory provision (see § 202(e)(1)(A) of the Act);

b. The heading to paragraph (b) (''Adjustments to value'') has been changed to read ''Permissible additions to, and deductions from, the value of materials'' to avoid any potential confusion between the heading to this paragraph and the term ''adjusted value;''

c. Paragraphs (b)(1)(i) and (b)(2)(i) have been revised to delete the words ''within or between the territory of Chile, the United States, or both'' to conform these paragraphs to the wording in the corresponding statutory provisions (see § 202(e)(2)(A)(i) and (B)(i) of the Act), respectively; and

d. Paragraph (c) has been modified to replace the term ''country,'' which is not defined in Subpart H, with the more appropriate term ''Party,'' which is defined in § 10.402(q);

19. In §§ 10.457(a) and 10.458(a), concerning fungible goods and materials, and accumulation, respectively, the term ''country'' has been replaced each place it appears with the more appropriate term ''Party;''

20. In § 10.461, relating to indirect materials, Example 1 has been revised to add the words ''of this subpart'' at the end of the parenthetical phrase ''see § 10.454(a)'' in the third sentence;

21. In § 10.470, relating to verification of claims for preferential tariff treatment:

a. The section heading has been revised to add the word ''tariff'' between the words ''preferential'' and ''treatment'';

b. The heading to paragraph (a) has been revised to remove the words ''by CBP'' to allow for the possibility that another U.S. Government agency may assist in a verification; and

c. The first sentence of the paragraph (a) introductory text has been revised to add the word ''tariff'' between the words ''preferential'' and ''treatment'' and to add the words ''of this subpart'' immediately following the reference to ''§ 10.410''.

d. The second sentence of the paragraph (a) introductory text has been revised to replace the words ''for any reason is prevented from verifying'' with the words ''is provided with insufficient information to verify or substantiate'', and to add the word ''tariff'' between the words ''preferential'' and ''treatment''. The former change recognizes that the words ''for any reason'' may be interpreted too broadly and result in the denial of a claim for reasons beyond the control of the parties to an import transaction. This new wording more accurately reflects the circumstances under which a verification may result in the denial of a claim—the failure to provide sufficient information to verify or substantiate the claim for preferential tariff treatment;

22. In § 10.473, concerning notice of a negative origin determination:

a. The incorrect reference to ''section''' in the introductory text has been replaced with the correct word ''subpart'';

b. The introductory text has been further revised to provide for the issuance of a negative origin determination ''via an authorized electronic data interchange system,'' as an alternative to the issuance of a written determination, consistent with CBP's movement toward a paperless environment; and

c. Paragraph (c) has been revised to replace the words ''the 'Rules of Origin' heading under this subpart'' with the words ''§§ 10.450 through 10.463 of this subpart'' to provide more clarity regarding the regulatory provisions to which this paragraph is referring;

23. In § 10.474, relating to repeated false or unsupported preference claims, the words ''CBP finds'' have been replaced with the words ''verification or other information reveals'' to more accurately reflect the wording in § 205(g) of the Act, which provides, in pertinent part, that ''[i]f the Bureau of Customs and Border Protection *or* the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct * * *.'' [Emphasis added.];

24. In § 10.483, concerning the framework for correcting declarations and certifications:

a. The incorrect reference to ''part'' in paragraph (a)(2) has been replaced by the correct word ''chapter''; and

b. Paragraph (c) has been revised to remove the word ''Written'' in the heading and by providing in the introductory text for the submission of a statement ''via an authorized electronic data interchange system,'' as an alternative to the submission of a written statement, consistent with the change described above in regard to § 10.410(b);

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, CBP believes that the interim regulations published as CBP Dec. 05–07 should be adopted as a final rule with certain changes as discussed above and as set forth below.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

The regulations to implement the preferential tariff treatment and other customs-related provisions of the US–CFTA were previously published in CBP Dec. 05–07 as interim regulations. CBP issued the regulations as an interim rule because it had determined that: (1) They involve the foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act (APA); and (2) prior public notice and comment procedures on these regulations were impracticable, unnecessary, and contrary to the public interest pursuant to section 553(b)(B) of the APA. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. The collection of information in these regulations is in §§ 10.410 and 10.411. This information is used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US–CFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Signing Authority

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

List of Subjects

19 CFR Part 10

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

19 CFR Part 191

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

Amendments to the Regulations

■ Accordingly, the interim rule amending parts 10, 24, 162, 163, 178, and 191 of the CBP regulations (19 CFR parts 10, 24, 162, 163, 178, and 191), which was published at 70 FR 10868 on March 7, 2005, is adopted as a final rule with certain changes as discussed above and set forth below.

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

■ 1. The general authority citation for part 10 and the specific authority for subpart H continue to read as follows:

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

* * * * *

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

§ 10.401 [Amended]

■ 2. Section 10.401 is amended by removing the words ''entered into'' in the first sentence and adding, in their place, the word ''signed'', by adding the word ''and'' immediately prior to the number ''163'' in the third sentence, and by removing the words ''and 191'' in the third sentence;

■ 3. Section 10.402 is amended by revising paragraph (c), removing current paragraph (o), re-designating current paragraph (n) as paragraph (o), adding a new paragraph (n), and revising paragraph (s). The revisions and addition to § 10.402 read as follows:

§ 10.402 General definitions.

* * * * *

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US–CFTA and to an exemption from the merchandise processing fee;

* * * * *

(n) *Identical goods.* ''Identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

* * * * *

(s) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable to an originating good under the US–CFTA, and an exemption from the merchandise processing fee.

* * * * *

■ 4. Section 10.410 is amended by adding the words ''including an exemption from the merchandise processing fee,'' immediately following the words ''under the US–CFTA,'' in the first sentence of paragraph (a) and by revising paragraph (b). Revised paragraph (b) reads as follows:

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

* * * * *

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification or other information on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other statement either in writing or via an authorized electronic data interchange system to the CBP office where the original declaration was filed specifying the correction (*see* §§ 10.482 and 10.483 of this subpart);

■ 5. In § 10.411:

■ a. The section heading is revised;

■ b. Paragraph (a) is amended by revising the introductory text and paragraph (a)(2)(iv) and by removing paragraphs (a)(2)(vii) and (a)(3);

■ c. Current paragraphs (b), (c), (d), and (e) are re-designated as paragraphs (c), (d), (e), and (f), respectively;

■ d. A new paragraph (b) is added;

■ e. The introductory text of re-designated paragraph (c) is revised;

■ f. Re-designated paragraphs (d) and (e)(2) and the introductory text to re-designated paragraph (f) are revised.

The additions and revisions to § 10.411 read as follows:

§ 10.411 Certification of origin or other information.

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

* * * * *

(2) * * *

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nonmenclature;

* * * * *

(b) *Statement.* A certification submitted to CBP under paragraph (a) of this section must include a statement, in substantially the following form:

''I Certify that:

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

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

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

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

(c) *Responsible official or agent.* A certification submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; or producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. The certification must include the legal name and address of the responsible official or authorized agent signing the certification, and should include that person's telephone and e-mail address, if available. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

* * * * *

(d) *Language.* The certification or other information submitted under paragraph

(a) of this section must be completed either in the English or Spanish language. If the certification or other information is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification or other information.

(e) * * *

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months. In the case of multiple shipments of identical goods, the certification must specify the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format.

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

* * * * *

■ 6. Section 10.412 is amended by revising paragraphs (a) and (b)(1) and by removing paragraph (d). The revisions to paragraphs (a) and (b)(1) read as follows:

§ 10.412 Importer obligations.

(a) *General.* An importer who makes a declaration under § 10.410(a) of this subpart is responsible for the truthfulness of the declaration and of all the information and data contained in the certification or other information submitted to CBP under § 10.411(a) of this subpart, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) * * *

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

* * * * *

§ 10.413 [Amended]

■ 7. Section 10.413 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.411'' each place it appears;

■ 8. Section 10.414 is amended by revising the section heading, paragraph (a) introductory text, and paragraph (b) to read as follows:

§ 10.414 Certification or other information not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification or other information demonstrating that the good qualifies as originating under § 10.411(a) of this subpart for:

* * * * *

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

demonstrating that the good qualifies as originating. The importer must submit such a certification or other information within 30 calendar days from the date of the written notice. Failure to timely submit the certification or other information will result in denial of the claim for preferential tariff treatment.

■ 9. Section 10.415 is amended by revising the paragraph (a) introductory text to read as follows:

§ 10.415 Maintenance of records.

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

* * * * *

■ 10. Section 10.416 is amended by revising paragraph (a) and by adding the words ''of this subpart'' immediately following the reference to ''§ 10.463'' in paragraph (b). Revised paragraph (a) reads as follows:

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

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

* * * * *

§ 10.420 [Amended]

■ 11. Section 10.420 is amended by adding the words ''of this subpart'' immediately following each of the references in the section to ''§ 10.421,'' ''§ 10.451,'' ''§ 10.421(a) or (b),'' and ''§ 10.421(c)'';

§ 10.421 [Amended]

■ 12. Section § 10.421 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.420'' in the introductory text and by removing the term ''HTS'' each place it appears in the section (and footnote) and adding, in its place, the term ''HTSUS'';

■ 13. Section 10.422 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.421'' in the paragraph (a) introductory text, by re-designating current paragraphs (a)(2)(ii) through (a)(2)(vii) as paragraphs (a)(2)(iii) through (a)(2)(viii), respectively, by adding a new paragraph (a)(2)(ii), and by revising paragraph (d)(2). New paragraph (a)(2)(ii) and revised paragraph (d)(2) read as follows:

§ 10.422 Submission of certificate of eligibility.

(a) * * *

(2) * * *

(ii) The legal name and address of the responsible official or authorized agent of the importer signing the certificate (if different from the importer of record), and that person's telephone and e-mail address, if available;

* * * * *

(d) * * *

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certificate.

§ 10.424 [Amended]

■ 14. Section 10.424 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.422'' in paragraph (a) and immediately following the reference to ''§ 10.425'' in paragraph (b);

§ 10.440 [Amended]

■ 15. Section 10.440 is amended by removing the word ''part'' each place it appears and adding, in its place, the word ''subpart'';

■ 16. Section 10.441 is amended by removing the word ''part'' in paragraph (a) and adding, in its place, the word ''subpart'', and by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 10.441 Filing procedures.

* * * * *

(b) * * *

(2) Subject to § 10.413 of this subpart, a copy of a certification of origin or other information demonstrating that the good qualifies for preferential tariff treatment;

* * * * *

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

■ 17. Section 10.442 is amended by removing the word ''part'' each place it appears in paragraphs (a) and (d)(1) and adding, in its place, the word ''subpart'', and by revising the heading and text of paragraph (b), the second sentence of paragraph (c)(2), paragraph (d)(2), and the second and third sentences of paragraph (d)(3). The revisions to paragraphs (b), (c)(2), (d)(2) and (d)(3) read as follows:

§ 10.442 CBP processing procedures.

* * * * *

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

(c) * * *

(2) * * * If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) * * *

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) * * * If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

§ 10.450 [Amended]

■ 18. Section 10.450 is amended by adding the words ''of this subpart'' immediately following the reference to ''§§ 10.450 through 10.463'' in the introductory text.

■ 19. Section 10.455 is amended by revising paragraph (a)(1), the heading to paragraph (b), and paragraphs (b)(1)(i), (b)(2)(i), and (c) to read as follows:

§ 10.455 Value of materials.

(a) * * *

(1) In the case of a material imported by the producer of the good, the adjusted value of the material with respect to that importation;

* * * * *

(b) *Permissible additions to, and deductions from, the value of materials.*

* * * * *

(1) * * *

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

* * * * *

(2) * * *

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

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

§ 10.457 [Amended]

■ 20. In § 10.457, paragraph (a)(4) is amended by removing the word ''country'' each place it appears and adding, in its place, the word ''Party''.

§ 10.458 [Amended]

■ 21. In § 10.458, paragraph (a) is amended by removing the word ''country'' each it appears and adding, in its place, the word ''Party''.

§ 10.460 [Amended]

■ 22. Section 10.460 is amended by removing the term ''§ 10.402(n)'' and adding, in its place, the term ''§ 10.402(o)''.

§ 10.461 [Amended]

■ 23. Section 10.461 is amended by adding in Example 1 the words ''of this subpart'' at the end of the parenthetical phrase ''see § 10.454(a)'' in the third sentence.

■ 24. In § 10.470, paragraph (a) is amended by revising the heading and the first two sentences of the introductory text, to read as follows:

§ 10.470 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.410 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential tariff treatment.

* * *

* * * * *

■ 25. Section 10.473 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this subpart, that the good which is the subject of the verification does not qualify as an originating good, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

* * * * *

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in §§ 10.450 through 10.463 of this subpart, the legal basis for the determination; and

* * * * *

§ 10.474 [Amended]

■ 26. Section 10.474 is amended by removing the words ''CBP finds'' and adding, in their place, the words ''verification or other information reveals'';

■ 27. In § 10.483, paragraph (a)(2) is amended by removing the word ''part'' and adding, in its place, the word ''chapter,'' and paragraph (c) introductory text is revised to read as follows:

§ 10.483 Framework for correcting declarations and certifications.

* * * * *

(c) *Statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

* * * * *

PART 191—DRAWBACK

■ 28. The general authority citation for part 191 continues to read as follows:

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

* * * * *

§ 191.0 [Amended]

■ 29. Section 191.0 is amended by removing the last sentence.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

Approved: December 15, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–9780 Filed 12–19–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9302]

RIN 1545–BC34

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance concerning requirements under section 409(p) of the Internal Revenue Code for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations. These final regulations generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations.

DATES: *Effective Date:* These regulations are effective December 20, 2006.

Applicability Dates: These regulations are generally applicable with respect to plan years beginning on or after January 1, 2006. See the Effective Date section of the preamble for specific information.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta or Veronica A. Rouse at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations (26 CFR Part 1) under section 409(p) of the Internal Revenue Code (Code).

Section 409(p)(1) requires an ESOP holding employer securities consisting of stock in an S corporation to provide that, during an allocation year, no portion of the assets of the plan attributable to, or allocable in lieu of, the employer securities may accrue (or be allocated directly or indirectly under any plan of the employer meeting the